The Solicitors' Journal

Vol. 103 No. 24 [pp. 457–476] JUNE 12, 1959 [One shilling and ninepence

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THE

SOLICITORS' JOURNAL

VOLUME 103

NUMBER 24

CURRENT TOPICS

Registration of Title

THE ATTORNEY-GENERAL'S reply last week on the extension of compulsory areas for registration of title (p. 474, *post*) was unnecessarily vague. While there is still room for argument about the merits of registration, most people are now convinced or resigned that compulsion must come. This being so, it is better that it should come sooner rather than later. We recently summarised the obstacles which stand in the way of widespread and immediate action, but none of these in our view prevents the Government from presenting the logistical data on which local authorities can formulate their plans. It is surely wrong that a measure of this importance should be relegated to the position of waiting upon the recruitment and training of staff unless the Government tell us what steps they are taking, not only to enable them to extend the compulsory areas but also to reduce the delays which still surround the titles already registered. An ever-increasing number of local authorities are becoming interested in the subject; the Government should be willing to do more than merely let things take their course.

An Alternative to Imprisonment?

WE can all agree with Mr. F. H. LAWTON, Q.C., in his suggestion in *The Times* last week that there should be some alternative to imprisonment as a punishment. It is less easy to agree on what the alternative should be. Mr. Lawton suggests only two. One is the loss of all welfare rights for a long period of, say, five or ten years. This would be effective only for those of moderate means. No one would accept the proposition that because a man has been convicted of some crime he should be deprived of the services of a doctor, of unemployment or sickness benefit or of an old age pension if he had no means of providing them for himself. Mr. Lawton's other suggestion is the direction of labour. With this we have considerable sympathy. In spite of the efforts which Mr. BUTLER is making, we are progressing lamentably slowly towards making imprisonment less frustrating for the prisoner and less wasteful for the country. The chief difficulty is the administrative repercussions, although they could hardly be as costly and elaborate as prisons. We are surprised that the deprivation of leisure alone envisaged by the Criminal Justice Act, 1948, in the form of detention at week-ends, has not become more widespread: again, the administrative difficulties are great, except possibly in densely populated areas. Even so, it should be possible to produce some form of punishment which would be stricter than probation but less demoralising than prison.

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Restriction on Vexatious Actions

THE Supreme Court of Judicature (Amendment) Act, 1959, which received the Royal Assent on 14th May, is concerned only with tightening the restriction on vexatious actions to be found in the Supreme Court of Judicature (Consolidation) Act, 1925. Section 51 of the 1925 Act provides that if, on an application made by the ATTORNEY-GENERAL under that section, the High Court is satisfied that any person has habitually and persistently and without any reasonable ground instituted vexatious legal proceedings, whether in the High Court or in any inferior court, and whether against the same person or against different persons, the court may, after hearing that person or giving him an opportunity of being heard, order that no legal proceedings shall without the leave of the High Court or a judge thereof be instituted by him in any court. To that provision is now added the extra proviso that any legal proceedings instituted by that person in any court before the making of the order shall not be continued by him without such leave. An addition is also made to s. 31 (1) of the 1925 Act to prevent an appeal lying from an order refusing leave for the institution or continuance of legal proceedings by a person who is the subject of an order for the time being in force under s. 51 of that Act. These new refinements on an old restriction should help to maintain smooth running of the machinery of justice despite the efforts of those wishing to throw a spanner, if not a whole tool-box, into the works.

County Court Litigation

CONCERN about delays in disposing of county court actions has been felt for some time amongst county court practitioners. Accordingly we welcome the news that the LORD CHANCELLOR has set up a working party, under the chairmanship of Judge ALAN PUGH, to investigate the congested state of the county court lists and to make recommendations. One outstanding difference in practice between a county court and the High Court is that at present the former is only equipped to deal with reasonably short trials whereas a High Court action, however long, generally continues until a decision is reached. In a county court a complex case must be adjourned part-heard and there may well be a delay of many months before judgment is obtained. Again, the time taken by such a case at its initial hearing may prevent cases later in the list coming on at all and these too must then join the queue for hearings at a later date. The frustration so caused is unfortunate particularly when it is remembered that the majority of citizens who become litigants do so at county court level. We wonder whether machinery should not be devised to enable legally complex cases, which of their nature are likely to be protracted, to be heard in the High Court notwithstanding that the value of the subject-matter involved would normally only carry entitlement to costs on the county court scale.

Magistrates' Powers

WE do not agree with the Bar Council's view that the list of offences triable summarily should be kept as it is. The time of magistrates and their clerks is being wasted by taking depositions in cases which, though heinous in theory, are comparatively trivial in practice. Provided that it never becomes a choice for the accused alone, which is unlikely, we cannot see anything wrong in allowing petty sessions to try cases which are well within their powers of punishment. Obviously some principle must be laid down, which means it is probable that some comparatively minor crimes would still have to go before a jury. We agree with the Bar Council that the division of responsibility between assizes and quarter sessions requires reconsideration, but we cannot agree that the extension of the system of Crown courts is undesirable. We would not contend that the whole country should be organised in this way, but there is little to be said for the duplication and delays which exist in many areas. In our view it is probable that it would be for the benefit of almost everyone to reduce the numbers of different points at which assizes and quarter sessions are held, to hold courts more frequently at those fewer places and thus to take advantage of the motor car instead of continuing to organise the administration of justice on an equine basis.

Judicial Ecstasy

WE are fortunate in this country in that, by and large, the behaviour of our judges in court conforms to the popular notion: they are calm and patient, knowledgeable yet detached, sympathetic or stern as appropriate, yet revealing little of individual idiosyncrasy. The lay litigant or spectator on his first contact with the majesty of the law in the High Court or at assizes looks up in reverence at the awe-inspiring figure on the Bench who, as an apparently infallible being, might almost be a figure from another world. Thus it is with something of a shock that we read of a judge's admission in court that he had been brought to something little short of ecstasy. It is still in line with the popular image of a judge that the sentiment in question should not actually be ecstatic and that the subject which caused it should be contemplated legislation to amend the authorised range of investments. The occasion for this confession by ROXBURGH, J., was the giving of his judgment in *Re Royal Naval and Royal Marine Children's Homes, Portsmouth* (1959), *The Times*, 5th June, when he made an interim order under the Charitable Trusts Acts, 1853 to 1939, enlarging the powers of investment of the trustees of those Homes. His lordship, in following substantially the schedule of investments approved by VAISEY, J., in *Re Royal Society's Charitable Trusts* [1956] Ch. 87, explained that he was anxious to have some uniformity of practice. The order made was an interim one, as would be any further orders varying ranges of investments, because an order to last for a specified time might be over-optimistic and the will of Parliament should not be anticipated by means of an order of extended duration. The interim nature of the order meant that it would take effect unless and until the law regulating the investment of trust moneys generally was amended.

Lands Tribunal Hearings

WE have been informed that there are a considerable number of heavy and important rating appeals, references and applications under s. 84 of the Law of Property Act, 1925, coming into the list of cases for hearing before the Lands Tribunal. The Tribunal wishes to be informed of the probable length of the hearing by each of the parties as soon as the pleadings are closed. As last-minute information and applications to postpone dislocate the circuits and the hearing lists, thus wasting public time and money, the Tribunal is unable to grant postponements for the convenience of counsel and expert witnesses save in exceptional circumstances.

THE NEW HOUSING ACTS

Housing (Underground Rooms) Act, 1959

ON 14th May, Royal Assent was given to two Acts dealing with housing, both of which will come into force on 14th June, 1959. The first, the shorter of the two, entitled the Housing (Underground Rooms) Act, 1959, was a private member's Bill, and deals with one minor point only.

In *Critchell* v. *Lambeth Borough Council* [1957] 2 All E.R. 417, decided before the passing of the consolidating Housing Act, 1957, it was held that the standards of fitness (then contained in s. 4 of the Housing Repairs and Rents Act, 1954) must be considered, as well as any relevant local regulation, when deciding whether or not a part of a house being an underground room should be closed as being unfit for human habitation under s. 12 (2) of the Housing Act, 1936; the consequence of this was that the 1954 Act had virtually the effect of repealing the regulations. Section 18 (2) of the 1957 Act confused the matter further, as the power to make local regulations was re-enacted, but it was also made clear that the standards (now contained in s. 4 of the 1957 Act) were to be retained. The new Act, in two short sections, clarifies the position. It takes the law back to what it was before the 1954 Act, establishing the point that a room is to be deemed to be unfit if it fails to comply with the local regulations made under s. 18 (2) (*b*), regardless of the standards of s. 4.

House Purchase and Housing Act, 1959

The House Purchase and Housing Act, 1959, a Government measure, is much more complicated, and will be of considerable importance to the private practitioner, as many houseowners will, it is anticipated, wish to take advantage of its provisions.

The Act, which has separate provisions for Scotland, deals with two main subjects, namely, (*a*) advances for house purchase, and (*b*) grants for the improvement of houses. These two subjects must be considered separately.

Housing advances

Section 1 of the Act empowers the Minister (of Housing and Local Government) to make "advances" (loans) in accordance with s. 2, to any building society which has been designated by the Chief Registrar of Friendly Societies for the purposes of the section, and also the funds of such a building society are to be regarded as a trustee investment for the purposes of s. 1 of the Trustee Act, 1925.

Section 3 widens the powers of local authorities to make loans on mortgage for house acquisition or construction, etc., under s. 43 of the Housing (Financial Provisions) Act, 1958, by—

(i) removing completely the maximum value of the dwelling in respect of which an advance may be made; hitherto a local authority could not make an advance if the value of the house was estimated to be in excess of £5,000; this provision does *not* also apply to advances made under the Small Dwellings Acquisition Acts;

(ii) enabling the authority to make an advance to the full value of the mortgaged security; hitherto a local authority could not make an advance in excess of 90 per cent. of the value; this provision applies also to advances under the Small Dwellings Acquisition Acts.

This section will no doubt be welcomed by borrowers from local authorities, but it should be remembered that these powers remain discretionary; a reluctant local authority, in spite of the many hortatory circulars issued by the Minister on this point, still cannot be compelled to make an advance of a particular amount—or indeed of *any* amount, in any specific case. The rates at which a local authority may borrow from the Public Works Loan Board have not been reduced substantially—and the open market rates remain comparatively high—so the rates of interest offered by local authorities to intending borrowers remain at present higher than those offered by the building societies; and as the Exchequer will lend to building societies under s. 2 at rates lower than the P.W.L.B. rate, this position is likely to continue.

Grants for improvements

This expression has been used as the sub-heading, as there are now, consequent on Pt. II of the new Act, two types of grants available to encourage private individuals to improve their dwellings.

(*a*) *Standard grants.*—These grants, introduced by the new Act, are "automatic," in the sense that they may be claimed as *of right* from the local authority, by any person carrying out works for the provision of one or more of the "standard amenities" in a dwelling (which expression is not defined, but it presumably includes a flat). The grant amounts to one-half of the cost shown to have been incurred in executing the works, subject to a maximum sum according to the works executed, as shown below:—

The standard amenities	*Maximum Grant**
	£
(*a*) A fixed bath or shower in a bathroom ..	25
(*b*) A wash-hand basin	5
(*c*) A hot-water supply‡	75
(*d*) A water closet† in or contiguous to the dwelling	40
(*e*) Satisfactory facilities for storing food ..	10
(*f*) If *all* the above amenities are provided ..	155

*Subject to the grant not exceeding, in any case, one-half of the total cost of the works.

‡This must include the connection of the hot-water supply to a sink, as well as to the bath or shower and the wash-hand basin: see s. 4 (5).

†This is not defined: in practice the definition of s. 90 (1) of the Public Health Act, 1936, will probably be applied.

The making of these grants is subject to the following conditions:—

(i) a grant will be paid in respect of works for the provision of any one of the "standard amenities" only if the dwelling is not already provided therewith;

(ii) the amenities must be provided for the exclusive use of the occupants of the dwelling;

(iii) an application, specifying the dwelling and the works proposed to be carried out and, where only some of the standard amenities are to be provided, including a statement that the dwelling is already provided with the remainder, must be made to the local authority and approved by them *before* the works are begun;

(iv) such an application must also contain a statement that the applicant is the owner of the dwelling or that the occupier has consented in writing to the application;

(v) the dwelling must not have been "provided" after 31st December, 1944, except where it was provided by conversion before 1st January, 1959, of a building erected before 1st January, 1945;

(vi) the local authority must be satisfied that after the execution of the proposed works the dwelling will not be unfit for human habitation (to be judged by the standards of s. 4 of the Housing Act, 1957: see s. 29 (2)) and will so remain and be available for use as a dwelling for at least fifteen years;

(vii) the local authority must also be satisfied that the applicant has an interest in the land constituting (except in the case where the applicant is acquiring or leasing the dwelling from the local authority under s. 105 (2) of the Housing Act, 1957) either an estate in fee simple absolute in possession or a term of years absolute of which at least fifteen years remain unexpired;

(viii) the works are executed to the satisfaction of the local authority.

Although the application for a standard grant must be made to and approved by the local authority before the works are commenced, it is clear that the actual amount of the grant cannot be ascertained, nor can payment be made, until after the works have been executed, for by s. 6 (1) it is provided that (subject to the maxima above mentioned) the amount of the grant shall be one-half of the cost "shown to have been incurred in executing the works in respect of which it is made."

If all the conditions are met, the grant *must* be made; if an application is not approved by the local authority, they must give the applicant their reasons for not being "satisfied" under (vi) or (vii) above; presumably if one or more of the other conditions above mentioned are not met, the application is rejected out of hand and it does not have to be "approved" or otherwise. If a local authority improperly refuse to make a "standard grant," an action for recovery of the appropriate amount would not, however, seem to lie, as the money is not payable until the works have been completed, and their duty to make the grant arises only in cases where an application is approved by them before the works are executed (see s. 4 (1)). An order of mandamus might, however, lie against an intransigent authority.

Where a standard grant has been made in respect of a dwelling, the "rent limit," in the case of a controlled tenancy subject to the Rent Acts, will be adjusted proportionately to the cost of the works falling on the landlord after deduction of the grant (see new Act, s. 27, and the Rent Act, 1957, s. 5). Where the dwelling is not a controlled tenancy the making of a standard grant will make the dwelling subject to a rent limit under the 1957 Act, as the conditions of Sched. IV to the Housing (Financial Provisions) Act, 1958, will apply (see s. 7), and if the dwelling is subject to a rent condition because an improvement grant has previously been paid in respect thereof, the local authority may in certain circumstances increase the "rent limit" (see 1959 Act, s. 12, and below).

(*b*) *Improvement grants.*—These were introduced by the Housing Act, 1949, and the substantive provisions are now contained in the Housing (Financial Provisions) Act, 1958, which are, except in a few detailed matters, left unchanged by the 1959 Act.

The procedure regulating applications for, and the making of, improvement grants remains unaltered, and the local authority have an absolute discretion (as distinct from their *duty* to make a standard grant in a proper case) whether or not to make an improvement grant. However, when they refuse any such application or give less than the maximum grant, they must, if the applicant so requests, give him a written statement of their reasons for so doing (1959 Act, s. 9).

Other amendments

Other amendments are as follows:—

(i) It will be sufficient if, in future, the applicant for an improvement grant has a leasehold interest in the property which is the subject-matter of the application, of which only fifteen years (not thirty) are still unexpired (s. 10).

(ii) The period during which the conditions specified in Sched. IV to the Housing (Financial Provisions) Act, 1958, will in future apply to a dwelling which has been the subject of an improvement grant is restricted to ten years (formerly this period was twenty years, subject to reduction in certain circumstances).

(iii) The right of a local authority to refuse to accept repayment (and consequential release of the conditions) of an improvement grant (plus interest) is abolished (s. 11 (2)).

(iv) The limitation on the persons who may occupy a dwelling which has been the subject of an improvement grant (see condition 3 in Sched. IV to the 1958 Act) is in some measure relaxed (see s. 11 (3)).

(v) The rent limit which applies to any dwelling which has been the subject of an improvement grant may, where the dwelling is not a controlled tenancy, be increased by the local authority if the application for an improvement grant (or a standard grant) includes a request for them to fix a higher rent. This point must therefore be taken into account when the application is made; it will be too late to make the request after the works have been executed. The considerations which must be taken into account by the local authority when considering such a request are detailed in s. 12.

Where at any time within three years after the making of a standard grant in respect of any dwelling an application for an improvement grant is made in respect of the same dwelling, then the minimum sum of £100 specified in s. 30 (3) of the 1958 Act (if the cost of the works is less than this sum, no application for an improvement grant can be entertained) is to be reduced by the cost of the works executed when the standard grant was made, provided that cost is stated in the later application. Similarly, the maximum amount of the improvement grant as prescribed by s. 32 (1) of the 1958 Act is to be reduced by the amount of any prior standard grant (see s. 8).

The other provisions of the Act, apart from those relating to Scotland, provide for contributions to be made from the Exchequer in respect of standard amenities provided in a dwelling by a local authority (s. 13), for such contributions to be made in respect of standard grants made by a local authority (s. 7), and varying the contributions payable by the Exchequer under the 1958 Act in respect of dwellings converted or improved by a local authority (ss. 15 and 16).

Provision is also made in the Act for the Minister by order to vary the class of standard amenities (s. 4 (2)), the maximum amount of a standard grant, and the several maxima for the particular amenities (s. 6 (4)); any such order must be made by statutory instrument, and it will be subject to annulment by resolution of either House of Parliament (s. 28 (3)).

The Ministry have stated that they propose to issue a booklet for general release to the public, and copies of this will no doubt be made available at council offices. The Act does not require applications for either standard grants or improvement grants to be on a prescribed form, but it is understood that the Ministry will be suggesting forms for use, and no doubt copies of these also will be made available on request.

J. F. GARNER.

Tax Planning in Perspective

THE NEW BOSTON TEA PARTY—III

DISCRETIONARY TRUST

MR. JONES has disposed of £30,000 shares of Barset Printing Co., Ltd., half his total holding, by means of a gift to his wife and accumulating settlements on his children. The remainder of his shares are to be settled on discretionary trusts.

The objects of the discretionary trusts will be the four children and their spouses, together with issue and spouses of issue born within the perpetuity period. Both Mr. Jones and his wife must be excluded from all possibility of benefiting except in the event of the death of any of the children under the age of twenty-five, because otherwise the income of the settlement would be treated as Mr. Jones' income under s. 22 of the Finance Act, 1958. The discretion will be exercised by the trustees, and will extend to both capital and income.

One of the advantages of this discretionary trust is that it enables the trustees to benefit the children according to their needs; each child will eventually receive £5,000 shares under his own settlement, but if a time comes when an unequal division is desirable, the trustees of the discretionary settlement can adjust the balance. Another advantage is the postponement of estate duty. Provided Mr. Jones survives the settlement by five years, it will be possible to avoid payment of estate duty on the capital for about two generations. As the law stands at present, no duty is payable on the death of an object of a discretionary trust, so long as there are at least two objects left alive.

The third advantage is in connection with the threat of a surtax direction on the company. A discretionary trust is an excellent hedge against a surtax direction, because it is extremely doubtful how far income can be apportioned to the beneficiaries. If it is apportioned merely to the trustees no harm is done because trustees are not liable to surtax. In practice the Special Commissioners do not usually attempt to go behind the trustees, and unless there are other members who are considerable surtax payers a direction is unlikely to be made at all.

The importance of the trustees

Mr. Jones was more easily reconciled to the idea of disposing of his shares when we pointed out that this need not involve any change in the policy of the company. He could select ourselves and his accountant to act as trustees not only of the discretionary settlement, but also of the settlements on the children, and while the trustees would have to perform their duties strictly, it was unlikely that they would use their voting power to disturb the policies which had been so successful in the past, or that they would neglect any reasonable advice of his if it were offered.

It would not be possible for Mr. Jones to take the powers of a governing director, because this would give him control of the company for the purposes of s. 55 and the assets basis of valuation, but he could safely remain the managing director and could secure his position by a long-term service agreement, provided it were on terms that were commercially justifiable.

The saving of tax

It is not intended in Mr. Jones' case that the income of the discretionary settlement should be accumulated to any great extent, and even if it were there would be no income tax reclaims under s. 228 of the Income Tax Act, 1952, because there is no income held for the benefit of any particular child. This is the disadvantage of a discretionary trust, and it is the reason why we advised him to settle some of the shares on separate settlements for the children individually.

Most of the income from the discretionary settlement will be needed for the children's keep and school fees, and to the extent that it is applied for their benefit while they are under twenty-one it will be deemed to be Mr. Jones' income (s. 397, Income Tax Act, 1952, as amended by s. 20 of the Finance Act, 1958).

Since there is now no way in which a father can use his income to pay his children's expenses, and at the same time avoid it being taxed as his own, the purpose of the discretionary settlement was not to reduce taxation, but to complete the defences against an assets basis valuation on Mr. Jones' death, and against a surtax direction on the company.

The shares have now been so well spread over the family that provided Mr. Jones lives for five years, none of his original holding will pass on his death; even if he is so unlucky as to inherit from his father and aunts all their £40,000 shares and to die before effectively disposing of them, he will not die in control and whatever shares he leaves will not be valued on the assets basis.

As to a surtax direction, the harvest would be so poor that the Special Commissioners might well hesitate before going to the trouble of apportioning the total income of the company. A 50 per cent. increase in the dividend would previously have cost Mr. Jones £1,360 in surtax, but now it would only cost :—

	£
Ann's husband	25
Mr. Jones (on Mrs. Jones' shares)	187
	£212

More earned income

To Mr. Jones' relief, we have now nearly finished with Barset Printing Co., Ltd. The final question is whether any of the company's income can be paid out to the family in such a way that it will bear tax substantially below the standard rate; if this can be done by payments which will

be allowed against the company's own tax, there will be a saving.

Again to Mr. Jones' relief, we have advised that his wife's earned income reliefs have been mainly absorbed by her fees from Barset (Properties), Ltd. She could receive a further £150 of earned income taxed at 6s. 3d. instead of 7s. 9d., but the difference of £11 5s. is not worth the trouble of bringing her on the board. Directors' fees paid to Jane, at the age of fifteen, would probably be disallowed in the company's accounts (*Copeman* v. *Flood & Sons, Ltd.* (1941), 24 T.C. 53).

Geoffrey, on the other hand, will have time to attend directors' meetings during vacation, and if he is appointed to the board and paid a fee of £100 a year this will bear no tax in his hands. Until he leaves university the fee should be limited to £100 to avoid his father losing the child allowance. If Mr. Jones makes Ann a director too, she can receive a fee of £180 which will be completely tax-free under the wife's earned income relief. These two fees would save the family as a whole £108 a year in income tax.

(To be continued) PHILIP LAWTON.

Common Law Commentary

DISMISSAL FOR DISOBEDIENCE

The case of *Laws* v. *London Chronicle* (*Indicator Newspapers*), *Ltd.* [1959] 1 W.L.R. 698; p. 470, *post*, is of much interest since there has been no really comparable reported case on the point since *Turner* v. *Mason* (1845), 14 M. & W. 112.

It is elementary that a servant must obey the orders of his master and the qualifications to be made to that simple proposition are few. One qualification is that the order must be within the scope of the servant's employment. Thus, in *Price* v. *Mouat* (1862), 11 C.B. (N.S.) 508, it was held that it is a wrongful dismissal to discharge a lace buyer for refusing to work at manual labour in the factory on the job of carding.

Turner v. *Mason*

The question which suggests itself on the facts of *Turner* v. *Mason* is whether there is a second qualification: that the order must be reasonable in the circumstances. Reading the facts of *Turner* v. *Mason* one might too readily draw the conclusion that there is no such rule for, on the assumption that the facts were true, it does seem that the order was unreasonable. But it must not be overlooked that in 1845 life was in many respects considerably different from what it is to-day and what may seem unreasonable to-day may not have appeared so in 1845.

We cannot be sure of the facts in *Turner* v. *Mason* since it is a case decided on the pleadings only: a special demurrer was entered by the defendant and the judgment for the defendant was given simply on the arguments on the demurrer. It appears that the plaintiff was a domestic servant hired for £7 per year; that she asked permission to leave the premises one evening for the whole of the night; that permission was refused and indeed she was forbidden to leave the house; that notwithstanding that order she did leave. She was thereupon dismissed and she brought this action on the ground that the dismissal was wrongful. Her plea depended largely on two matters for its support: first that her being absent did not in any way "cause any injury or hindrance to the defendant in his said domestic affairs or business, nor (was the plaintiff) guilty of any improper omission or unreasonable delay of her duties . . . ," and secondly, that the reason for her absence was that her mother "had been seized with sudden and violent sickness, and was then in imminent peril of death, and by reason thereof (the mother) believed herself likely to die, and being anxious to see the plaintiff before her death, had then requested the plaintiff to visit her . . ." and this plea continues with an assertion that her absence was on that account only and there was no intention to be guilty of any improper conduct or unreasonable delay. The pleadings treat the master's forbidding her leave of absence as wrongful and unjust.

The view taken by the judges was that the pleadings admitted disobedience of the order and did not disclose a good reason for the disobedience. When in the course of the argument Parke, B., pointed out the wilful disobedience and counsel answered by saying there may be a good reason for such disobedience, Pollock, B., came back with: "Then it should come by way of replication." Alderson, B., asserts that it is a lawful order not to stay out all night, whereupon counsel cited *Fillieul* v. *Armstrong* (1837), 7 Ad. & El. 557, but Pollock, B., pointed out that that case was not one relating to a domestic servant. In the course of his judgment Parke, B., said: "Even if the replication shewed that (the master) had notice of the cause of her request to absent herself, I do not think it would be sufficient to justify her in disobedience to his order; there is not an imperative obligation on a daughter to visit her mother under such circumstances although it may be unkind and uncharitable not to permit her. But the replication states nothing to show that the defendant had any notice or knowledge of the mother's illness. It is therefore clearly bad, and our judgment must be for the defendant."

We do not know whether the "dying mother" reason was genuine or not nor whether the master was given this reason at the time the request for leave of absence was made. Baron Parke would apparently have been unmoved even if it had been so but the court consisted of four judges and it is not abundantly clear that all would have taken the same view. The whole case, as was common in those days, was argued on a casuistic basis.

On the assumption that the plaintiff in *Turner* v. *Mason* had a genuine filial motive (strong enough to cause her to bring an action at law) one has some sympathy for her. One would have little for the plaintiff in *Fillieul* v. *Armstrong* though in his case he succeeded! The report shows that he was engaged as a teacher of French and drawing in the defendant's school and that he did not return after a vacation for some days, causing inconvenience and dislocation of the curriculum. Just as Miss Turner's case was lost on the pleadings so Mr. Fillieul's was won on them.

What is unsatisfactory about these cases is the lack of any evidence to give the background to the purely legal arguments. To-day, the lawyer comes out of the precincts of the Inn and studies the facts which give rise to problems in the application

of the rules of law. Admittedly there was disobedience to an order in *Turner* v. *Mason*, but to-day we should want to know more of the facts of the case.

Laws v. *London Chronicle*

That, at any rate, was the view of the Court of Appeal in *Laws* v. *London Chronicle*. Here, too, there was disobedience to an order which was clearly not an unlawful order. But the order was given in circumstances where it was as reasonable for the servant to disobey it as to obey it and consequently it was held that subsequent dismissal for disobedience was wrongful. Perhaps there is matter of importance in having regard not to whether the order is " reasonable " but whether it is reasonable to demand obedience to the order.

According to the report the plaintiff had been in the employ of the defendants only three weeks when the occurrence giving rise to the dismissal took place. The chairman and managing director had invited an outside expert to advise him on business efficiency and had required the advertising manager and two others—one of whom was the plaintiff—to be present. During the conference an unedifying scene broke out between the chairman and the advertising manager and it was apparently suggested that the advertising manager was drunk. The chairman requested that someone get some black coffee for the advertising manager to calm him. The advertising manager is reported as having behaved badly and as having declared that he would go and take the staff with him (including the plaintiff). The chairman requested the two members of the staff to stay, but they followed the advertising manager when he went out of the room. Following the dismissal of the plaintiff she brought this action in which the defendant relied on *Turner* v. *Mason*.

The Master of the Rolls said that in his judgment it would be going too far to say that any of the judges in *Turner* v. *Mason* laid it down as a proposition of law that every act of disobedience to a lawful order entitled the employer to dismiss the servant. The proper conclusion to be drawn was that since a contract of service was but an example of contracts in general, the general law of contract was applicable; and it followed that if summary dismissal was claimed to be justifiable, the question must be whether the conduct complained of was such as to show that the servant disregarded the essential conditions of the contract of service. It was no doubt therefore generally true that wilful disobedience of an order would justify summary dismissal since such disobedience showed a deliberate disregard of a condition essential to the contract of service, and unless the servant obeyed the proper orders of the master the relationship was struck at fundamentally. Miss Laws said that she left the room because she owed loyalty to Mr. Delderfield (the advertising manager) who was her direct superior, that, although very embarrassed, she felt it impossible to stay and that she did not know what to do because she was so upset. His lordship was satisfied that it could not be said that her conduct amounted to such a wilful disobedience of an order as justified the employer in saying that the contract must be treated as ended and consequently that he could summarily dismiss her.

This decision is a valuable corrective to the out-of-date treatment of the problem by *Turner* v. *Mason*.

L. W. M.

The Practitioner's Dictionary

" UNMARRIED "

THE word " unmarried " is capable of two constructions. Its primary or natural meaning in a direct gift is " never having been married." This may be illustrated by *Dalrymple* v. *Hall* (1881), 16 Ch. D. 715, where property was given by will to trustees in trust as to one equal sixth part for Green for life, " but if he should die unmarried " his share was to be divided equally between the children of his brothers. There was no disposition of the *corpus* of the share except in this specified event. At the date of the will Green was a bachelor, but he subsequently married and at the time of his death he was a widower. Hall, V.-C., held that as there was no " context to indicate the meaning of the word ' unmarried ' . . . I must . . . attribute to it its ordinary meaning, namely, ' without ever having been married '." In view of this decision, the gift to the children of his brothers did not take effect as Green did not die " unmarried." *Re Hall-Dare* [1916] 1 Ch. 272, is also in point. In that case, Younger, J., found that " the expression ' unmarried ' meant ' without ever having been married '."

However, the word will be accorded its secondary meaning if there is something in the context or the circumstances which will justify the court in departing from the primary meaning of the term. For example, in *Re Jones* [1915] 1 Ch. 246, a testator left property in trust for his nephew James, his heirs and assigns unless James should die " unmarried and without lawful issue." It was held that the collation of the words " without lawful issue " showed that the word " unmarried " was used in its secondary sense of " without leaving a widow." Sargant, J., explained that if " unmarried " was to be read in its ordinary sense of " bachelor " the words " and without lawful issue " were entirely superfluous as a bachelor could not have lawful issue.

Again, in *Cameron* v. *Gray* [1954] N.Z.L.R. 1051, McGregor, J., thought that in the particular context of a deed of gift the word " unmarried " should be given the meaning " not in a state of marriage at the relevant time," while in *Re Lesingham's Trusts* (1883), 24 Ch. D. 703, it appeared that there was a gift on trust for Julia Hannah Hughes " if she be then sole and unmarried." In this context, North, J., held that the words meant " not having a husband " at the time referred to and it mattered not whether the legatee had ever had a husband, or whether she had lost him by death or divorce.

According to the opinion of Pearson, J., expressed in *Re Sergeant* (1883), 26 Ch. D. 575, " slight circumstances " will be sufficient to give the word " unmarried " its secondary meaning of " having no spouse living " at the time in question, but his lordship agreed that in " an absolutely colourless instrument " the word should be construed as meaning " never having been married."

The term " unmarried " may be given its secondary meaning by the context of a statute. Thus, in *Maberley* v. *Strode* (1797), 3 Ves. 450, the court was asked to construe a

provision contained in s. 7 of the Statute of Settlements. The section in question contained the words "If any unmarried person not having child or children shall be lawfully hired . . ." and Sir Richard Arden, M.R., thought it apparent that the word meant "not having a wife at the time" although he conceded that this was not the usual construction of that word in a will.

D. G. C.

NON-RATEABLE TANKS

PLANT and machinery have on more than one occasion been in the rating headlines in recent months. First, there was the publication of the report of the Committee on the Rating of Plant and Machinery which had been appointed on 26th November, 1957, as part of the general review of local government finance then being made. Secondly, there was the decision of the House of Lords in *Shell-Mex & B.P., Ltd.* v. *Holyoak* [1959] 1 W.L.R. 188; p. 154, *ante*, which concerned the rateability of petrol storage tanks in a petrol-filling station. Finally, on 25th March last, it was announced in Parliament that the expected new order implementing the recommendations of the Plant and Machinery Committee, due to come into force on 1st April, had been postponed.

The present statutory order governing the rating of plant and machinery is the Plant and Machinery (Valuation for Rating) Order, 1927. This order sets out the various classes of plant and machinery to be taken into account when valuing a hereditament for rating purposes, contrary to the general rule expounded by s. 24 (1) of the Rating and Valuation Act, 1925, that no account was to be taken of the value of any plant or machinery. By that subsection, certain classes of plant and machinery mentioned in Sched. III to the Act were deemed to be part of the hereditament. That schedule, however, merely gave general principles and limited illustrations: it is the order which sets out the various classes in detail.

The 1957 Committee was appointed to revise those details together with power to review the interpretation placed by the courts on the order and to recommend changes in that interpretation for the purposes of preparing a revised order, and also to draw attention to any desirable amendments to Sched. III to permit greater clarity and precision in the drafting of a revised order. It was proposed to the committee that there should be no order at all, leaving the question of whether plant or machinery should be rated to be decided by reference to Sched. III with, perhaps, more explicit definitions. Fairly obviously to make a recommendation on those lines was not within the powers of the committee, but it did give answers to the criticisms of a detailed list, not least of which was that with the removal of such a list the field of argument as to what was rateable must inevitably be extended. The committee's report was in many respects unsatisfactory; the postponement of the making of a new order recognises that fact, but in view of the remarks in this respect the likelihood of a detailed statement being abolished is remote.

The House of Lords decision

The order is headed "Classes of machinery and plant deemed to be part of the hereditament" and the *Shell-Mex* case is concerned with class 4 of that order—the class where contention has always been the greatest—which begins: "The following parts of a plant or a combination of plant and machinery, whenever and only to such extent as any such plant is, or is in the nature of, a building or structure." There is then a long list of items, the relevant one for the purpose of the case being "tanks." Generally, the recommendations of the committee with regard to this class are (i) the word "items" should replace "parts" in the heading—the latter had been generally criticised; (ii) a proviso should be added to the heading to exclude ancillary moving parts; and (iii) certain new items should be added and certain others deleted. These recommendations add nothing to the interpretation of "building or structure"—a considerable bone of contention—and admissions by the parties in the *Shell-Mex* case make that decision unsatisfactory for any seeking further light on the meaning of that phrase. Whether the postponement of the making of the new order means that another examination will be made into this aspect of the subject, or indeed whether any change in the law is contemplated as a result of the *Shell-Mex* decision, cannot as yet be said.

The facts

The hereditament in the *Shell-Mex* case was a wayside petrol-filling station of the usual type with a single building for office, stores and showroom, and a concrete forecourt with three petrol pump islands each with two pumps. Beneath the ground in pits were four 3,000-gallon tanks for petrol. The tanks had to be installed underground in accordance with the licence of the local authority. Each tank measured 13 feet 6 inches in length by 7 feet in diameter and when empty weighed about two tons. They had been delivered as complete units. Each tank was placed on concrete cradles, 12 inches high, in a pit and it rested there by its own weight. The pit had a concrete floor and walls of brick lined with concrete. After the tank had been placed in position the pit was filled with sweet sand to absorb any possible leakage and to minimise the risk of explosion. The whole was then covered with concrete 6½ inches thick. It was impossible to remove the tank except by demolishing that concrete covering although there was a manhole with a cover supported on rolled steel joists providing an access through that concrete to the top of the tank. Each tank was in a separate compartment and was connected by underground pipes to one or two of the pumps but not to the other tanks. The concrete coverings formed an extension of the forecourt at the side of the building.

It was agreed between the parties that each tank formed part of the plant installed at the filling station. It was further agreed that each of the pits in which the tanks were situated was itself a building or structure or was in the nature of a building or structure, and the valuation officer admitted that each tank by itself was neither a building nor a structure nor in the nature of a building or structure. Briefly the contentions made on behalf of the ratepayers were that the "tank" within the terms of the order was the metal compartment excluding the pit or compartment in which it lay: the pit was not part of the tank but formed the structure in which it was placed for protective reasons. It was contended on behalf of the valuation officer that the whole of the installation, both tank and compartment, was a "functional

entity " and that that functional entity formed the " tank " for the purposes of the order. The expression " functional entity " was taken from the decision of Jenkins, J., in *Cardiff Rating Authority* v. *Guest, Keen, Baldwin's Iron & Steel Co., Ltd.* [1949] 1 K.B. 385.

The local valuation court held that the tanks were rateable. However, the Lands Tribunal (Erskine Simes, Esq., Q.C.) came to the conclusion that the metal container was the only part of the installation which could properly be called a " tank " and that that " tank " did not form a " functional entity " with the compartment and, as it was admittedly not, nor in the nature of, a building or structure when looked at by itself, it should not be deemed to be part of the hereditament under s. 24 (1) of the 1925 Act and the order. Accordingly the tanks were held not to be rateable. On appeal the Court of Appeal (Lord Evershed, M.R., Parker and Sellers, L.JJ.) unanimously reversed that decision. They held that the tank and the compartment housing it were together the tank within class 4 of the order and so rateable.

The reasons

By a majority the House of Lords considered otherwise. Lord Keith of Avonholm and Lord Denning, dissenting from the majority decision, were of the opinion that the decision of the Court of Appeal should be upheld though not for exactly the same reasons. Lord Keith found, as the Court of Appeal had, both the tank and compartment together to be in the nature of a building or a structure. On the other hand, Lord Denning said ([1959] 1 W.L.R. 203): " Lord Evershed, M.R., and Parker, L.J., seem to have regarded the whole installation as a ' tank ' which was in the nature of a structure: whereas I think the metal cylinder still remains a ' tank ' but, by being built into one whole structure, it partakes of the nature of a structure."

However, the majority of the House of Lords (Viscount Simonds, Lord Morton of Henryton and Lord Reid) held that the " tank " was not the whole installation but only the metal cylinder and that that cylinder was not, nor in the nature of, a building or structure. Viscount Simonds said (p. 193) that clearly the metal cylinder was properly called a tank and it had some significance that in the ordinary user of words by persons accustomed to deal with that sort of thing the " tank " was the metal container. He went on: " It is a thing which is to be ' tilted to simplify extraction of sludge ' and a thing of which it can be said that the sand in-filling is not to be laid until the air test of it has been completed . . . it is at least abundantly clear that the metal cylinder alone can be and is properly identified as a ' tank ' ".

What those two operations, the sludge extraction and air test, are is nowhere stated in the reports of the case, but it does seem that they had to be performed before the concrete cover was laid. Later Viscount Simonds said (p. 194): " The question remains whether there is a ' tank ' formed by the whole installation or a ' tank ' which is housed within a structure. I have come to the conclusion that the latter view is correct . . . I think that paramount weight should be given to the consideration that beyond doubt the metal container is a tank and is identifiable as a tank wherever it may be placed whether above ground or underground and by whatever structure it may be protected."

The use of the words " by whatever structure it may be protected " suggest that Viscount Simonds is not stating that a tank similar to those under consideration could in no circumstances become part of a building or structure and so rateable, but that a loose tank, however housed, would not be rateable. The reference, therefore, to the sludge extraction and the air test would seem to be to emphasise that this was a recognisably loose tank which had been housed in a protective structure and not to postulate the axiom " once a loose tank always a loose tank."

This certainly is the view of Lord Morton of Henryton who said (p. 196) that he could not accept the contention made on behalf of the respondent valuation officer that each cylinder lost its identity as a tank when it was in the underground structure and thereupon the whole underground installation became a tank and consequently rateable as being or being in the nature of a building or structure. " The position might well be different if the metal cylinder were so linked with the surrounding compartment as to become one physical entity with it—for instance, if the space now filled with sand were filled with concrete adhering to the cylinder. As it is, the cylinder is simply a tank which has been placed in an underground structure, and surrounded with sand, for safety reasons. It is not a physical entity with the compartment, but can be lifted out and replaced again at the will of the owner, still in exactly the same condition, although it would be necessary . . . to demolish the concrete covering before removing the cylinder. If the respondent's contention were correct, the cylinder would again become a tank when it emerged from the pit, and would lose its identity as such if and when it was replaced in the pit. This seems to me a highly artificial conception." A little later he said, " I would accept the view advanced by counsel for the appellants that the placing of a tank within a building or structure, whether for convenience of operation or to protect the tank or to protect persons from nuisance or risk emanating from the tank, does not cause the building or structure to become a functional entity with the tank which it contains or *vice versa*. The tank and its functions remain unaltered by the building which contains it, and similarly the nature and function of the building remain unaltered by the tank which it contains."

Lord Morton there would seem to impliedly accept the test of " functional entity " of which Viscount Simonds said (p. 191): " I . . . doubt whether so vague and elastic an expression is of any real assistance in determining whether a piece of plant or machinery is, or is in the nature of, a building or structure." Lord Denning was more emphatic in his criticism and said that the phrase should be discarded. " Physical entity " was also rejected as a test by Viscount Simonds as being a case of *obscurum per obscuris*. But with Lord Morton, Lord Reid would seem to have decided that the tanks were not rateable on the grounds of the absence of a physical entity with the compartments, though he does not in fact use those precise words.

He said (p. 199): " I agree that in fact, from a practical point of view, it would not be sensible or realistic to split the two things up [i.e., the tank and the compartment]. But . . . it appears to me to be the purpose of this legislation to split up for rating purposes installations which are for practical purposes indivisible. I must therefore leave out of consideration the functional connection between the chambers and the cylinders. Then it appears to me to be clear that the tank is the cylinder and nothing else. There may well be cases where a tank consists of a structure with a metal lining, in such a case probably the lining would not be capable of use as a tank without the support of that structure. But these cylinders are not mere linings: they would properly have been described as tanks before they were enclosed in the chambers, and enclosure did not alter their character.

Taking the ordinary meaning of the word 'tank' I think that these cylinders were tanks originally and are still tanks. They have not acquired additional walls: the sand cannot be part of the tank wall, and I do not think that it would be in accordance with ordinary usage to say that the walls of the chambers became part of the tanks by reason of the tanks being enclosed in the chambers."

Conclusions

An examination of the speeches of Lord Keith and Lord Denning would also suggest that they relied on the fact of whether or not the tanks were physical entities with the compartments; though they came to the conclusion that they were. It would seem, therefore, that a functional connection is not the test of rateability. To discover whether the object is rateable, once it has been found to be within the list set out in class 4 of the order, and is obviously not a building or structure in itself, it is necessary to decide whether it has become so attached to a building or structure, either by degree of annexation or by an impossibility of standing on its own account, that it can be said to form one physical entity with that building or structure. How far this test would be of assistance to objects other than those very similar to the tanks in question it is difficult to say. As the decision does not help to decide whether an object itself is, or is in the nature of, a building or a structure presumably the Court of Appeal decisions in *Burton* v. *Ogdens (Brighton), Ltd.* (1952), 45 R. & I.T. 470, and *British Portland Cement Manufacturers* v. *Thurrock Urban District Council* (1950), 43 R. & I.T. 841, are still good law. In both of these cases the objects in question, an oven and a kiln, were held to be in the nature of a structure though they rested by their own weight.

If, as seems probable, the *Shell-Mex* case is largely confined to its own special facts, although some of the old authorities would still need a careful re-examination, it is doubtful whether its effect would be so widespread as to necessitate any legislated change in the law. The number of petrol filling stations is considerable but the amount of money involved for any given rating authority may not be great—certainly the rating authority in the *Shell-Mex* case did not see fit to take any part in the proceedings. One change which might well meet many objections, especially when the use of oil for non-industrial purposes is increasing and therefore the number of "tanks" also, is to have greater regard to what, according to the 1957 Committee's Report, was the original intention of Parliament, i.e., "to derate *process* plant and machinery with the important exception of plant and machinery which is of such a nature that it ought properly to be considered part of the hereditament." To limit the exemption to process plant or machinery unless it is, or is in the nature of, a building or structure would be one way to prevent the Order from derating plant or machinery on hereditaments, such as petrol-filling stations, where no manufacturing process is carried on.

N. D. B.

Landlord and Tenant Notebook

NEW TENANCY: SUFFICIENCY OF NOTICE OF OPPOSITION

THE respondent in *Bolton's (House Furnishers), Ltd.* v. *Oppenheim* [1959] 1 W.L.R. 685; p. 452, *ante*, was a landlord of business premises and had served the applicants (who sought a declaration) with a notice to terminate. Such a notice must, by s. 25 (6) of the Landlord and Tenant Act, 1954, state whether the landlord would oppose an application for a new tenancy, and, if so, on which of the grounds set out in s. 30 (1) he would oppose it. Section 30 (1) (*f*) states: "That on the termination of the current tenancy the landlord intends to demolish or reconstruct the premises comprised in the holding or a substantial part of those premises or to carry out substantial work of construction on the holding or part thereof and that he could not reasonably do so without obtaining possession of the holding."

It may be observed that the paragraph contemplates an intention to do one of four things in all. The landlord had in fact specified two of them: his notice said: "I . . . would oppose an application for the grant of a new tenancy on the ground that on the termination of the tenancy I intend to demolish the premises comprised in the holding and thereafter to carry out substantial work of construction on the holding . . .", but he had not gone on to state that he could not reasonably do these things without obtaining possession.

Danckwerts, J., was asked to, and did, hold that there was, by inference, imported into the notice a reference to the requirement that the work could not reasonably be carried out without obtaining possession of the holding.

Inference and importation

In so holding the learned judge applied and was guided by two decisions of the Court of Appeal, of which *Biles* v. *Caesar* [1957] 1 W.L.R. 156 (C.A.) was perhaps the more important. In that case a notice had stated as the ground: "to demolish and reconstruct the whole of the premises comprised in your holding." It transpired that the intention was limited to demolition and reconstruction of a substantial part of the holding. The Court of Appeal took the view that it was quite plain that the landlords were relying on ground (*f*). They need not specify any of the subsidiary portions as long as they make clear which is the paragraph on which they rely. They had travelled a lesser distance than the distance covered by their notice, but had proved enough to bring themselves within ground (*f*).

The other case, *Sidney Bolsom Investment Trust, Ltd.* v. *E. Karmios & Co. (London), Ltd.* [1956] 1 Q.B. 529 (C.A.), concerned a tenant's request for a new tenancy in notifying which the tenant had not specified duration. Section 26 (3) requires a statement of the property to be comprised, the rent to be payable, and the "other terms." The old tenancy had been a seven years' lease. The tenant had in fact contemplated or visualised a grant for fourteen years, the maximum term that can be ordered. The court construed the request as one for a seven years' tenancy.

Danckwerts, J., treated this decision as an authority for the proposition that "matters of inference" may be admissible. A logician might not agree. Rejecting the

reasoning: "I want a new tenancy; you can order a fourteen years' tenancy; therefore I want a fourteen years' tenancy" is one thing; but "I want a new tenancy; I had a seven years' tenancy; therefore I want a seven years' tenancy" seems to be more imaginative than rational.

Notice to quit

But it was substantially by reference to *Biles* v. *Caesar* that Danckwerts, J., decided that the notice before him sufficed; the learned judge indicated that he himself would, in the absence of binding authority, have held that the requirements were not fulfilled. The decisions showed, however, that the same complete strictness was not to be imported into a notice to terminate as was imported into a notice to quit at common law.

The observations contrasting the notices are, I submit, liable to mislead unless the context is borne in mind. Both are unilateral acts, and the same complete strictness should be required as regards premises and date. The observations appear applicable only to the intended ground of opposition, which is, of course, not a feature of a common-law notice to quit.

The decision can be expressed in this way: the landlord is not entitled to oppose an application for a new tenancy on any ground which occurs to him and which he might consider valid. He has a choice and the tenant knows what choice there is. Thus it may suffice if the notice indicates which rather than what.

The notes

A point mentioned by Danckwerts, J., was that the notes (Form No. 7) which are part and parcel of a landlord's notice to terminate and which reproduce the seven paragraphs of s. 30 (1), do not reproduce them word for word. Nearly so, but where the paragraphs use the word "holding" the notes say "premises." Thus the "intends to demolish or reconstruct the premises, etc. . . . and that he could not reasonably do so without obtaining possession of the holding" of s. 30 (1) (*f*) becomes, in the notes, ". . . without obtaining possession of the premises." Curious, the learned judge called it. It may be that the draftsman of the notes considered that many recipients of landlords' notices to terminate would not be such as would at once consult their legal advisers or be aware of the definition of "holding" in s. 23 (3): ". . . the property comprised in the tenancy, there being excluded any part thereof which is occupied neither by the tenant nor by a person employed by the tenant and so employed for the purposes of a business by reason of which the tenancy is one to which this Part of this Act applies." But the possible importance of the distinction between "premises" and "holding" was recently emphasised by *Nursey* v. *P. Currie* (*Dartford*), *Ltd.* [1959] 1 W.L.R. 273 (C.A.); p. 221, *ante* (and see the "Notebook" at p. 285, *ante*).

A comparison

A recent decision, *Frankland* v. *Capstick* [1959] 1 W.L.R. 204 (C.A.); p. 155, *ante*, showed that when construing statutory notices given under the Agricultural Holdings Act, 1948, courts are disposed to infer intention from surrounding circumstances (see p. 250, *ante*). That was a case of notice to claim dilapidations, held, though the wrong person was named as landlord, to suffice because it clearly conveyed an intention to invoke the right which the Act gave. But one can perhaps better compare and contrast with *Bolton's* (*House Furnishers*), *Ltd.* v. *Oppenheim* the decision in *Budge* v. *Hicks* [1951] 2 K.B. 335 (C.A.), as the notice disputed in that case was a notice to quit which, it was suggested, could not be challenged by counter-notice because it stated one of the reasons set out in s. 24 (2) of the Agricultural Holdings Act, 1948. The "you have broken the terms of your lease by cutting timber reserved in the lease, wilful damage and neglect of my property and . . . farming the land . . . contrary to the rules of good husbandry," was held to be ambiguous because the recipient could not tell whether a remediable breach (para. (*d*)) or an irremediable breach (*para.* (*e*)) was alleged.

I see that "Jackson and Muir Watt" recommends not giving a mere reference to the paragraph letter in such cases. In the case of notices to terminate business tenancies, Denning, L.J., said in *Biles* v. *Caesar*, *supra*: "It is not necessary for them [the landlords] to specify any of the subsidiary portions of a paragraph, so long as they make it clear which is the paragraph on which they rely." This, I submit, must not be taken to mean that a mere reference to the number of the paragraph will suffice; as has been observed, one paragraph may itself contain alternatives.

R. B.

"THE SOLICITORS' JOURNAL," 11th JUNE, 1859

On the 11th June, 1859, The Solicitors' Journal noted: "The last return made to the House of Commons on commitments by county court judges brings the matter to such a pass as will . . . command the interference of the legislature. It appears that during the year preceding the date of the return upwards of 11,000 persons had been committed to prison by these judges . . . As all these thousands of defaulting debtors have been maintained, during their incarceration, at the public expense, it becomes difficult to say whether the individuals concerned or the nation at large have more interest in procuring the alteration in the present law. Imprisonment in any case is but a clumsy remedy and is only justifiable on the question of policy in criminal cases from the belief entertained that punitive restraint . . . has a direct effect in reforming the offender and deterring others from following his evil example . . . But it is difficult to understand on what principle imprisonment on civil process can be justified; the idea that it deters others from incurring debt is rebutted by the numbers found to be imprisoned, while it is wholly nugatory for effecting the original object of the suit—the payment to the plaintiff of the sum wrongfully withheld from him . . . The tone adopted on the question by more than one county court judge is not reassuring . . . It is a singular proof of the obstructiveness exhibited . . . by nearly all officials that a set of men who owe their judicial position to a recent measure of law reform are taking nearly the first opportunity that has presented itself to make a unanimous stand in favour of a glaring evil condemned by nine-tenths of the nation. It used to be supposed that this tenacious defence of recognised abuses was confined to old institutions, grown stagnant from partial disuse."

Wills and Bequests

Mr. W. H. Brown, solicitor, of Harrow, left £70,736 net.
Mr. William Lomas, retired solicitor's clerk, left £5,874 net.
Mr. Roland Stone, solicitor, of Weston-super-Mare, left £31,332 net.

HERE AND THERE

THE FRENCH

FOR a long time now the French have despised their politicians and obeyed them as little as they could. The French have been conspicuously lacking in the blind discipline of the Germans and the amiable acquiescence of the English. In their primary preoccupation they adopted the conclusion of "Candide" and cultivated their gardens and their fields. In the metaphorical sense, too, they were the most cultivated people in the world, far too intelligent to swallow whole, as other less acute peoples did, the myth of automatic and inevitable "Progress" naïvely identified with the indiscriminate adoption of every invention which applied science might care to throw at the heads of humanity, but, between the wars, though their intelligence produced profound and stimulating discussion, it did not produce intellectual or moral coherence capable of resisting the barbarian forces making for the disintegration of European civilisation. France has now adopted an expedient which for her is no new experiment, the expedient of a personal leadership, appealing to the living tradition which has built a people of such diverse elements, Celts and Northmen and Germans and Basques and Italians, united in a conception of way of life, not a mere political formula, but broad based enough to adapt itself to the contrasting systems of monarchy, empire and republic.

THE CLOCHARD

WHETHER the present régime in France can bring her to terms with the world as it at present stands we shall see. That adaptation has its byways as well as its highways, and I hope it will not seem frivolous to explore one or two of the byways. In the byways of French social life the *clochard* has long been a recognised institution. It is odd that in his case the English language, so often poetical where French is precise, is for once prosaic where French is poetical. We call him simply a tramp. But because he sleeps under the great bell-tent of heaven the French call him by a name derived from the slang word for the sky, *cloche*. In England he survives almost exclusively in the productions of comic artists and he is almost as out of date as that other staple of theirs, the broad-arrowed convict. Somehow or other, by legislation and social pressures the tramp, as an English type, has been marched off our roads and streets. Not so in France. In Paris there are some 3,000 *clochards*, mostly male, but some female, and a Bill has recently been introduced into Parliament to make it an offence to live habitually on the public highway, even though the accused has money and sometimes does a little work and therefore cannot be said to be without visible means of support. That is the trouble. The true *clochard* is not just an unfortunate derelict. Incomprehensible though it may be to the respectable and the conventional, he chooses his way of life deliberately. He side-steps the demands of society and makes no demands on it. Occasional casual work in the markets will provide for his modest needs; by day he can sleep in the sun or under the arches. One may be an ex-officer with a pension. Another may be an intellectual only too ready to deliver an impromptu lecture with the price of a bottle of wine as his fee. They neither beg nor steal. They do no harm to anyone, but to have 3,000 dilapidated-looking characters waiting for Godot all over the public thoroughfares is not pleasing to the eye of the officials of a tourist-conscious nation. No foreigner is to guess that a particular bundle of rags under the arches has some millions of francs to his name. All the same, it is risky to interfere with other people's way of life. Take the Lisbon fishwives, a class who traditionally can put by very comfortable savings but who always go about barefooted with their long baskets balanced on their heads. The Portuguese Government felt it was bad for the prestige of the capital to have women walking about barefooted, so a law was promulgated that no one must go out without a pair of shoes. The fishwives tried it but found they got blisters and bunions. So thereafter they were to be seen barefooted again with their baskets on their heads and on top of the fish a pair of shoes. They were observing the law. They had not gone out without a pair of shoes.

THE SNAIL

ANOTHER leisurely traveller on the byways of France who is causing anxiety in modern conditions is the snail. But this time the problem is the reverse; it is how he shall survive under present stresses. In the ducal and gastronomic province of Burgundy he is one of the prime delicacies. In his self-contained, self-sufficient life he is a sort of gypsy, taking his own lodging with him wherever he goes. But modern ways are catching up with him, not, at his pace, a very difficult matter. International mass-gastronomy is on his trail. A recent county court case reminded us that he is apt to arrive at London restaurant kitchens in tins. In that case the snail had posthumously avenged the indignity of canning by becoming infected with a microbe and poisoning the lady who consumed him, thereby taking his place in English case-law beside his less aristocratic Scottish kinsman who was drowned in a ginger-beer bottle. Now international mass-gastronomy demands mass-slaughter and the mayors of some thirty Burgundian municipalities have issued orders forbidding snail seekers access to ground within their boundaries, lest the race should perish. It is doubtful how far their writ runs on private land but the idea of requiring a *permis de chasse* to hunt the snail is pleasing. No doubt the purveyors of mass luxury who want everyone to have everything everywhere (or, anyhow, to experience that impression) will in due course resort to broiler-house methods, and so long as their product remotely resembles the Burgundian snail in its more obvious characteristics that will be good enough for the customers. There are some pretty remarkable non-Burgundian burgundies around and the two can go together. Meanwhile, those who are content to wait for their snails till they meet them on the paradise of the tables of the Côte d'Or know that there indeed "Burgundy's Burgundy all the year round."

RICHARD ROE.

Obituary

Mr. HERBERT HARVEY MOSELEY, senior solicitor to the Prudential Assurance Co. from 1929 to 1935, died on 27th May, aged 86. He was a director of the company from 1935 to 1950.

Mr. GEOFFREY KEITH ROSE, M.C., barrister-at-law, died on 2nd June, aged 69. He was called to the Bar in 1913 and appointed a metropolitan magistrate in 1934.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

House of Lords

MARKET: DISTURBANCE: RIVAL MARKET

Scottish Co-operative Wholesale Society, Ltd., and Others *v.* Ulster Farmers' Mart Co., Ltd.; Ulster Farmers' Mart Co., Ltd. *v.* Scottish Co-operative Wholesale Society, Ltd., and Others

Viscount Simonds, Lord Reid, Lord Tucker, Lord Keith of Avonholm and Lord Somervell of Harrow. 14th May, 1959

Appeal and cross-appeal from the Court of Appeal in Northern Ireland.

The respondent company was the owner of the market place and market rights at Enniskillen, in the county of Fermanagh, Northern Ireland. The company's rights as market owner extended to numerous commodities including live pigs of bacon weight for slaughter and pig carcases. Prior to 1934 the market in pigs was confined to carcases. In 1933 an organisation called "the Pigs Marketing Board" was established under the provisions of the Agricultural Marketing Act (Northern Ireland), 1933, for the purpose of buying live pigs from producers. It had a monopoly of the purchase of live pigs of bacon weight in Northern Ireland and it distributed them to bacon curers throughout that area. In 1940 the Ministry of Agriculture for Northern Ireland became the sole purchaser of live pigs for slaughter, and also the sole lawful buyer of pig carcases under the provisions of the Pig (Sales) (Northern Ireland) Order, 1940, which, however, authorised the Ministry to license bacon curers to buy carcases themselves. The appellant society and other bacon curers were so licensed by the Ministry and they attended the market at Enniskillen and bought carcases there up to 15th July, 1948. Before that date the society had no abattoir of its own, but brought certain live pigs by arrangement with the Ministry to the then market owner's abattoir for slaughter. This abattoir was closed down in 1947 and was not purchased by the company when it acquired the market rights from the former market owner in that year. Between 1934 and 1948 certain arrangements were made between the market owners on the one hand and the Pigs Marketing Board, the Ministry and the society on the other, under which payments were made to the market owners in respect of live pigs and carcases which were sold outside the market. In 1946 the society obtained permission from the Ministry to build an abattoir of its own, and the Ministry undertook to use the society's premises at Enniskillen as the principal collecting centre for County Fermanagh to which producers could bring live pigs which they had for sale. On 19th July, 1948, the society's new premises were opened and the new scheme, following an advertisement in the local press, came into operation, under which live pigs bought by the Ministry were transported to the society's abattoir either at a subsidised rate or at the producer's own expense, and pigs killed on the farms were accepted by the society to be delivered at the producer's expense. After 19th July, 1948, neither the society nor the Ministry had attended at the company's market and no person attending there had been able to sell pigs of bacon weight by reason of the absence of the society and the Ministry, or to sell pig carcases because of the absence of all persons authorised to purchase. Further, since that date, the society and the Ministry had ceased to pay the market owner any sum for or in lieu of tolls, and the company's claim for tolls in respect of pigs passing through the society's premises had been met by the plea that no such tolls were payable. In an action by the company against the society, the Ministry and others, for alleged disturbance of its market rights by levying a rival market and otherwise, Curran, J., held that there had been no disturbance and, accordingly, dismissed the action. On appeal, the Court of Appeal held that live pigs sold to the society by the Ministry and delivered at the society's premises by transport provided by the producers, and purchases by the society of dead pigs delivered by the producers at their premises, constituted a disturbance of the company's market rights. The society and the Ministry appealed and the company cross-appealed.

Viscount Simonds said that he would deal first with the allegation that the appellants levied a rival market. In his opinion the respondents fell far short of establishing anything of the kind. The authorities established (see Pease & Chitty, Law of Markets and Fairs, 2nd ed., p. 65) that the essential feature of a rival market was the provision of facilities for a concourse of buyers and sellers. This followed logically from the nature of a franchise of market of which no better definition had been given than by Chatterton, V.-C., in *Downshire* v. *O'Brien* (1887), 19 L.R. Ir. 380, 390: "A market is properly speaking the franchise right of having a concourse of buyers and sellers to dispose of commodities in respect of which the franchise was given." As to the first class of case, the subject of the cross-appeal, namely, where the producer had availed himself of the transport facilities provided by or on behalf of the Ministry, he (his lordship) agreed with the majority of the Court of Appeal that in such a case, the sale to the Ministry having taken place at the farm at which the live pigs were delivered, there was so far no disturbance of the respondents' market rights. The market owners never had the right to prevent a farmer from selling privately on his farm, whether the sale was of one or two or a large number of pigs. Equally, he was of opinion that neither by bringing all the pigs so bought to the society's premises as a collecting centre nor by then selling them, whether before or after slaughter, to the society did the Ministry or the society in any way establish a rival market to the disturbance of the respondents' rights. As to the next class of case, where the producer brought the live pigs to the society's premises by his own transport, the Lord Chief Justice proceeded on the basis that the contract for the sale of the pigs took place on the society's premises. He found that this created a radically different situation and held that it would be quite wrong and unrealistic to regard transactions induced by the invitation contained in the advertisement as private sales on private premises. He thought that the result was to make the society's premises a concourse of sellers though not of buyers but was of opinion that the one-sided nature of the concourse facilities did not prevent what had been done in this connection constituting a rival market. He (his lordship), however, could not accede to the view that a rival market was levied even if the sale to the Ministry took place on the society's premises and the Ministry (as the fact was) then sold to the society the pigs it required and dispatched any surplus to Belfast. It was true upon this assumption that a number of sellers took their produce to the same premises, though it would be a misuse of language to speak of a "concourse" of sellers. But apart from this there did not appear to be any single feature of a market. So far from there being a concourse of sellers and buyers, the public had no right to enter upon the society's premises in order to buy: and not only had they no right to enter but entry would have availed them nothing, for the Ministry, as they were well entitled to do, made their own arrangements for the disposal of the pigs. No doubt there had been cases where a rival market had been held to be established when all the sales had been made by a single auctioneer acting on behalf of a number of sellers, but such cases were remote from the present case and must, in any event, in view of the observations of Maugham, L.J. (as he then was), in *Corporation of London* v. *Lyons, Son & Co. (Fruit Brokers), Ltd.* [1936] Ch. 78, be very closely scrutinised. What he (his lordship) had said about the second class of live pigs applied also to the sale of carcases to the society. That disposed of the case as regards the creation of a rival market. But there remained the question whether the appellants had been guilty of any other form of disturbance. Counsel for the respondents had contended that since there might be disturbance of a market by doing an act whereby the market owner was deprived either wholly or in part of the benefit of his franchise, it was sufficient to look at the sequence of events and thus conclude that, but for the scheme operated by the Ministry and the society, pigs live or dead which went direct to the society's premises would or might have found their way to the respondents' market. This meant nothing less than that any act which might result in a loss to the market owner was an injury to him: it left no room for the *damnum absque injuria* which was a commonplace in a trading community: and it was in fact a proposition of law for which there was no foundation. If it was well founded, no shopkeeper

or indeed any private person could buy or sell any marketable article within market limits: a view at one time held, at least in regard to sales on market days, but long since discarded. He (his lordship) did not doubt that the general proposition for which the respondents contended must be qualified by saying that a sale outside the market which had or might have the effect of depriving the market owner of toll or some other advantage was an actionable disturbance only if the person selling took or sought to take the benefit of the market. That was clearly a "fraud upon the market." The market owner provided the facilities and attracted the concourse. Whoever took advantage of that concourse could not fairly avoid paying his proper dues. He (his lordship) knew of no case in which (apart from rival market cases) this had not been an essential element either express or implied. Always the underlying assumption was that, but for the act complained of, the producer would have paid toll or other dues in the market and that the intention of the act was to evade such payment. It was impossible, in his opinion, to bring this law of the market into relation with the circumstances of the present case. In his opinion, therefore, the appeal must be allowed with costs and the cross-appeal dismissed with costs.

LORD REID delivered a concurring opinion.

LORD TUCKER agreed with the opinion of Viscount Simonds.

LORD KEITH OF AVONHOLM and LORD SOMERVELL OF HARROW delivered concurring opinions. Appeal allowed. Cross-appeal dismissed.

APPEARANCES: *C. Nicholson*, Q.C., *E. W. Jones*, Q.C., *R. L. E. Lowry*, Q.C., and *J. C. MacDermott* (of the Bar of Northern Ireland) (*Linklaters & Paines*); *W. F. Patton*, Q.C., *J. A. Brown*, Q.C., and *B. Kelly*, Q.C. (of the Bar of Northern Ireland) (*Stephenson, Harwood & Tatham*).

[Reported by J. A. GRIFFITHS, Esq., Barrister-at-Law] [2 W.L.R. 857

Court of Appeal

DISCOVERY: PRIVILEGE: HOSPITAL CASE NOTES: COPY PREPARED BY SOLICITORS FOR LITIGATION

Watson *v.* Cammell, Laird & Co. (Shipbuilders and Engineers), Ltd.

Lord Evershed, M.R., and Willmer, L.J. 21st April, 1959

Appeal from Elwes, J.

The plaintiff in an action for damages for personal injuries claimed that a copy of the case notes prepared by the Birkenhead Hospital Management Committee in respect of his attendance for treatment at St. Catherine's Hospital, Birkenhead, was privileged and should not be produced to the defendants. The claim in the action was based on disablement resulting from meningitis which the plaintiff had developed early in 1957 when he returned to work after an accident. The defendants wanted to see the reports before the trial of the action, because meningitis could be infective in origin or traumatic, that is, resulting from an injury. The information in the reports would, therefore, be relevant to the preparation of the defence and to the desirability or otherwise of making a payment into court. The writ in the action was issued on 4th December, 1957, but it had been made plain by the plaintiff's advisers soon after he had developed meningitis that proceedings would be taken, so that when copies of the reports were made, litigation was in active contemplation. The copies were made by the plaintiff's legal advisers to assist in advising their client in making his claim. The defendants applied to the Hospital Management Committee to see the reports but were refused permission. In February, 1959, Elwes, J., refused an application by the defendants for discovery of the copy and they appealed.

LORD EVERSHED, M.R., said that it seemed to him that in the present case—as in *The Palermo* (1883), 9 P.D. 6—the document with which the court was concerned was a copy which was made by the plaintiff's advisers for the purposes of the litigation in which the solicitors were acting for the party. That being so, in his (his lordship's) judgment, the judge was right in holding that he could not make the order. The appeal would be dismissed.

WILLMER, L.J., concurring, said that the court was bound by the decision of the Court of Appeal in *The Palermo* (*supra*). Appeal dismissed. Leave to appeal refused.

APPEARANCES: *C. M. Clothier* (*Carpenters*, for *Laces & Co.*, Liverpool); *David McNeill* (*Field, Roscoe & Co.*, for *Berkson and Berkson*, Birkenhead).

[Reported by J. A. GRIFFITHS, Esq., Barrister-at-Law] [1 W.L.R. 702

CONTRACT OF SERVICE: DISOBEDIENCE OF SERVANT: WRONGFUL DISMISSAL

Laws *v.* London Chronicle (Indicator Newspapers), Ltd.

Lord Evershed, M.R., Lord Jenkins and Willmer, L.J. 22nd April, 1959

Appeal from Westminster County Court.

A few weeks after the plaintiff had joined the employ of the defendant company she was dismissed summarily for disobeying an order given by the chairman and managing director. During a business meeting which the plaintiff had been required to attend, the plaintiff's immediate superior, a Mr. *D*, had an altercation with the chairman and managing director and *D* left the meeting, inviting the plaintiff and another employee to accompany him. The chairman and managing director told the two employees to stay where they were but they both left the room. Having been summarily dismissed, the plaintiff brought proceedings for wrongful dismissal and claimed damages. The county court judge awarded her £45 damages and costs. The defendants appealed.

LORD EVERSHED, M.R., said that one act of disobedience or misconduct could justify dismissal only if it was of a nature which went to show (in effect) that the servant was repudiating the contract, or one of its essential conditions. In other words, the disobedience must at least have the quality that it was wilful, that was to say, that it amounted to a deliberate flouting of the essential conditions of the contract. In the circumstances of the present case, he (his lordship) was satisfied that it could not be said that the plaintiff's conduct amounted to such a lawful disobedience of an order, such a deliberate disregard of the conditions of service, as justified the employer in saying: "I accept your repudiation. I treat the contract as ended: I summarily dismiss you." The appeal would be dismissed.

LORD JENKINS and WILLMER, L.J., agreed. Appeal dismissed.

APPEARANCES: *Owen Stable* (*Oswald Hickson, Collier & Co.*); *Stephen Stewart* (*Tyrrell Lewis & Co.*).

[Reported by J. A. GRIFFITHS, Esq., Barrister-at-Law] [1 W.L.R. 698

TOWN AND COUNTRY PLANNING: PLANNING PERMISSION SUBJECT TO CONDITIONS: WHETHER CONDITIONS *ULTRA VIRES*

Fawcett Properties, Ltd. *v.* Buckingham County Council

Lord Evershed, M.R., Romer and Pearce, L.JJ. 27th April, 1959

Appeal from Roxburgh, J. ([1958] 1 W.L.R. 1161; 102 SOL. J. 859).

On 5th December, 1952, the Buckingham County Council, acting under ss. 14 and 36 of the Town and Country Planning Act, 1947, granted to the plaintiffs' predecessor in title permission to develop an area at Chalfont St. Giles by building thereon a pair of semi-detached cottages subject to a condition that: "The occupation of the houses shall be limited to persons whose employment or latest employment is or was employment in agriculture as defined by s. 119 (1) of the Town and Country Planning Act, 1947, or in forestry, or in an industry mainly dependent upon agriculture and including also the dependants of such persons as aforesaid." The document added: "The reasons for imposing the said conditions are because the council would not be prepared to permit the erection of dwelling-houses on this site unconnected with the use of the adjoining land for agriculture or similar purposes." The approval was registered as a local land charge. The property was within the metropolitan green belt, but there was no development plan yet in operation, although one was being prepared. At first the cottages were occupied by persons whose employment was covered by the terms of the condition, but the plaintiffs, who acquired the freehold in 1956, wished to put in occupation persons whose employment was not so covered. They therefore sought a declaration that the condition was *ultra vires* the county council, or that it was void for uncertainty, or that the condition was no longer effective having been applicable only to the first occupants. Roxburgh, J., held that the condition was *ultra vires* and of no effect. The council appealed. *Cur. adv. vult.*

LORD EVERSHED, M.R., said that if the condition in the present case was to be held "invalid" (that was, beyond the competence of the council to impose) it must be shown that its terms, upon the face of them, were demonstrably unrelated to the proposed

plan, so that the result was the same as if the council had never had the proposed plan and its requirements really or properly in its mind at all. In other words, it was not enough that the terms were not such as, in the opinion of the court, were best designed to subserve or promote the intended plan; or that, while capable of subserving or promoting the plan, they did so inefficiently and were or might be also capable, in practice, of creating anomalous situations and permitting occupation of the cottages by persons who had no concern with the intended agricultural use of the adjoining property. The main criticism of the condition had been in two directions: first, that there was no limitation (as regards either the permitted occupants or as to the agricultural or industrial enterprises covered by the terms of the condition) to the adjoining district; and, second, that the phrase "any industry mainly dependent on agriculture" covered a type of enterprise not only vague and extremely wide in its scope, but also unrelated to the (supposed) rural requirements of the neighbourhood. These objections were formidable. But after much consideration he (his lordship) had come to the conclusion that in the light of Lord Greene, M.R.'s exposition of the relevant principles in *Associated Provincial Picture Houses, Ltd.* v. *Wednesbury Corporation* [1948] 1 K.B. 223, 228, 233, they were not sufficient to "invalidate" the condition. It was to be remembered (1) that the subject-matter to which the condition related was two small "farm workers' cottages" in a rural area, and (2) that the condition was intended to persist for an indefinite period of time. In these circumstances, it seemed to him (his lordship) as a practical matter that in the foreseeable future and, at any rate, in at least nine cases out of ten, the effect of the condition was to limit the use of the cottages to the occupancy of persons who had a direct interest as workers in the agricultural requirements of the area; and that, although the language of the condition would allow to qualify for occupation other persons who would have no such concern, for example (to cite extreme instances used in the course of the argument), an ex-employee of a sheep farm in New South Wales, or the servant of a canning factory in a neighbouring county, the result was only to show that the council had not limited the class of occupancy in the most strict or efficient way or in the way they might have done had they had the advantage before drafting the condition of hearing the arguments in this court. In other words, he had in the end come to the conclusion both (*a*) that the terms of the condition did not suffice to show that the council failed, or must be deemed to have failed, to have regard to the matters which, by the terms of the statute, they should have regarded, and (affirmatively) (*b*) that the terms of the condition were fairly and also reasonably (in the sense of intelligibly and sensibly, if not most economically and efficiently) related to the council's planning scheme and proposals. There remained the question whether the condition was void for uncertainty. As to that, in his judgment, although the condition was not clearly expressed and there might be difficulty in deciding whether certain cases would or would not comply with it, it was not void for uncertainty. Accordingly, the appeal should be allowed.

ROMER and PEARCE, L.JJ., delivered concurring judgments. Appeal allowed. Leave to appeal.

APPEARANCES: *J. P. Widgery*, Q.C., and *Alan Fletcher* (*Sharpe, Pritchard & Co.* for *R. E. Millard*, Aylesbury); *R. E. Megarry*, Q.C., and *C. F. Fletcher-Cooke*, Q.C. (*A. L. Philips & Co.*).

[Reported by J. A. GRIFFITHS, Esq., Barrister-at-Law] **[2 W.L.R. 884**

DOCK REGULATIONS: CONSTRUCTION: REMOVAL OF HATCH COVERING

Cockerill *v.* William Cory & Son, Ltd.

Morris, Sellers and Willmer, L.JJ.
6th May, 1959

Appeal from McNair, J.

The plaintiff's husband, a boatswain, fell to his death through an open hatchway of a vessel while she was loading a cargo of coal at a berth. Although the coamings of the hatch were about 5 feet in height, and therefore did not require to be covered under reg. 37 of the Dock Regulations, 1934, there existed hatch covers which had been removed for the loading. The plaintiff claimed damages from the defendant shipowners alleging breach of reg. 45 of the regulations of 1934, in that the defendants had failed to replace the covers over the hatchway when the necessity for their removal had ended. Regulation 45 provides: "No person shall, unless duly authorised or in the case of necessity, remove or interfere with any fencing, gang way, gear, ladder, hatch covering . . . or other things whatsoever required by these regulations to be provided. If removed, such things shall be restored at the end of the period during which their removal was necessary, by the persons last engaged in the work that necessitated such removal." McNair, J, found for the defendants and the plaintiff appealed;

MORRIS, L.J., said that the question arose whether the words in reg. 45 "required by these regulations to be provided" governed all that had gone before, or whether they governed only the words "other things whatsoever." It was argued on behalf of the plaintiff that the latter was the correct construction. Such a construction was put on reg. 45 by Lord du Parcq in *Grant* v. *Sun Shipping Co., Ltd.* [1948] A.C. 549, but his opinion was expressed *obiter* and did not bind the court. On the facts of the present case it would seem to be a strange result that if hatch coverings were not required by the regulations, yet because they existed there was a statutory requirement to restore them if they were removed. The question arose, therefore, as to the construction of the first sentence of reg. 45. The view that his lordship had formed was that the words "required by these regulations to be provided" governed the things mentioned in the early part of the sentence. The words "other things whatsoever" referred to other things required by the regulations, in addition to the things required by the regulations that were previously mentioned. Therefore, in regard to hatch coverings, reg. 45 referred to such hatch coverings as were required by the regulations to be provided. In the present case, because of the height of the hatch coamings, there was no requirement to provide hatch coverings on No. 1 hatch. It followed, therefore, that there was no breach of reg. 45 and that the claim failed on that ground.

SELLERS, L.J., agreeing that the appeal should be dismissed, said that on the view he took the hatch covers on that hold were not required to be provided by the regulations, and therefore reg. 45 could not be applied. Even if it could, he doubted if the regulation required the shipowners to replace them. The work that necessitated their removal—which removal might have been done by the ship as the vessel was approaching her berth at the staithes as was done in respect of holds 2 and 3—was the loading of coal. The shipowners were not the persons engaged or to be engaged in the loading, and therefore were not the persons required by reg. 45 to restore the covers at the end of the period during which their removal was necessary.

WILLMER, L.J., delivered a concurring judgment. Appeal dismissed.

APPEARANCES: *F. W. Beney*, Q.C., and *J. L. Elson Rees* (*E. B. V. Christian & Co*); *Montague Berryman*, Q.C., and *W. G. Wingate* (*Botterell & Roche*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] **[2 W.L.R. 870**

COUNTY COURT PRACTICE: NON-SUIT

Clack *v.* Arthur's Engineering, Ltd.

Hodson, Romer and Willmer, L.JJ. 11th May, 1959

Appeal from Judge Reid, sitting at Kingston upon Thames County Court.

The plaintiff entered the service of the defendants as works manager, but his employment was terminated by the defendants at the end of the first week and he was paid a week's salary and an additional week's pay in lieu of notice. He claimed that although paid weekly he was engaged for a month's trial period in the first instance. He therefore sued the defendants for the balance of a month's salary, amounting to £65 18s. The defendants denied that there had been any engagement for a month's trial period. The county court judge, having heard evidence on both sides, found that the plaintiff had not proved his case, but invited him to amend his particulars of claim; this his counsel elected not to do and the judge then non-suited the plaintiff and awarded the costs to the defendants. The defendants appealed.

WILLMER, L.J., reading the judgment of the court, said that, since the introduction of the 1883 Rules of the Supreme Court, the High Court retained no power to enter a non-suit; but in the county court the power survived, and was specifically preserved by Ord. 23, r. 3, of the County Court Rules, 1936. Three submissions had been advanced on behalf of the defendants in support of the appeal: (1) That the power to non-suit a plaintiff

could not be exercised without the consent of the plaintiff; (2) that Ord. 23, r. 3, had no application to a case such as the present, where the plaintiff's evidence, if it had been accepted, would have fully proved his case; (3) that, assuming the rule to be applicable to the circumstances of this case, the judge failed to exercise his discretion judicially, in that he chose to non-suit the plaintiff, without being invited to do so, after the plaintiff by his counsel had specifically declined an invitation to amend the particulars of claim. As to the first submission, it seemed clear that, following the old practice of the courts of common law, the judge had an unfettered discretion to enter a non-suit regardless of the absence of consent on the part of the plaintiff. The defendants, therefore, had no cause for complaint merely on the ground that the plaintiff was non-suited without his consent. Secondly, in the court's judgment, the wording of the rule was wide enough to cover any case in which the evidence was held not to prove the claim, whether because it was of itself insufficient, or because it was rejected in favour of the defendants' evidence. Therefore, this case was within the rule, and it was a matter for the discretion of the county court judge whether he should non-suit the plaintiff or give judgment for the defendants. In the court's view, the judge's exercise of discretion was open to criticism in two ways. First, he appeared to have arrived at his decision to non-suit the plaintiff without hearing counsel on either side. The possibility of a non-suit was not discussed in argument and the order which the judge made took counsel on both sides completely by surprise. It was not a judicial exercise of discretion to make an order of this kind without giving the parties affected an opportunity of being heard. An even more serious criticism was that the judge non-suited the plaintiff—thereby giving him the opportunity of bringing fresh proceedings against the defendants—after he had already specifically drawn attention to the state of the plaintiff's pleaded case, and had invited counsel for the plaintiff to consider whether any amendment was desired. The plaintiff had, therefore, already had his chance of putting forward his claim against the defendants in the alternative way, and had elected not to take advantage of the opportunity already afforded to him. To give him a second chance now, thereby enabling him to harass the defendants by instituting fresh proceedings, would be a grave injustice to the defendants in the circumstances. In either case the overriding consideration was that in the public interest there should be an end to litigation. For these reasons, although the defendants had failed to satisfy the court that under the rule it was not competent for the judge to non-suit the plaintiff, they were entitled to succeed on the ground that, in the circumstances, he failed to exercise his discretion judicially by doing so. Consideration might well be given to the desirability of abolishing the power to non-suit in the county court, as it had been abolished in the Hugh Court. Appeal allowed.

APPEARANCES: *Marcus Anwyl-Davies* (*Sharpe, Pritchard & Co.*, for *Horne, Engall & Freeman*, Egham, Surrey); *John Deby* (*W. H. Thompson*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] **[2 W.L.R. 916**

Chancery Division

PRACTICE AND PROCEDURE: ISSUE OF WRIT TO PREVENT OPERATION OF LIMITATION ACT, 1939: SERVICE WITHHELD BY ARRANGEMENT: WHETHER WRIT SHOULD BE RENEWED

E., Ltd. *v.* C. and Another; *ex parte* E., Ltd.

Roxburgh, J. 4th May, 1959

Chambers summons adjourned into open court.

On 29th August, 1957, the plaintiff company issued a writ against the defendants claiming that a deceased director of the plaintiff company and the defendants, his widow and daughter, who were also directors of the plaintiff company, were guilty of misfeasances and breaches of trust; but no dates were given as to when the misfeasances began or ended. The writ was never served on the defendants, but it was shown to their solicitors on 10th September, 1957, when it was arranged that service of the writ should be withheld, the existence of the proceedings being regarded, by both sides, as no more than a protection in respect of the Limitation Act, 1939. On 26th August, 1958, on an application under R.S.C., Ord. 8, r. 1, the master granted a renewal of the writ for six months, which expired on 29th February, 1959. In April, 1959, the plaintiff applied for the renewal of the writ.

ROXBURGH, J., said that there was jurisdiction under R.S.C., Ord. 8, r. 1, and Ord. 64, r. 7, to grant the application if in his discretion he thought fit. In *Battersby* v. *Anglo-American Oil Co., Ltd.* [1945] 1 K.B. 23, the Court of Appeal said that the court ought not to allow a writ to be renewed when such renewal would deprive a defendant of a statutory defence based on a limitation which had accrued before the date of renewal. The point of the writ in this case was to stop the statutory period of limitation running and the arrangement by which service was withheld was an attempt by the two parties to do what did not lie in their power: it was not for them but for the court to decide whether the writ should be renewed (see *Battersby's* case). Having regard to all the facts it was not a case in which his lordship should exercise his discretion in favour of a renewal of the writ. The parties had been trying to use the rules for the very purpose for which they were not intended. It was because nothing generally emerged in open court in this type of case, and because apparently there had been some latitude in the administration of the rules, that his lordship had given permission for his judgment to be made public. Application dismissed.

APPEARANCES: *T. M. Shelford* (*Warren & Warren*).

[Reported by Miss J. F. LAMB, Barrister-at-Law] **[1 W.L.R. 692**

Queen's Bench Division

ESTATE AGENT: COMMISSION: "PREPARED TO ENTER INTO CONTRACT"

Ackroyd & Sons *v.* Hasan

Winn, J. 24th April, 1959

Action.

The plaintiffs, a firm of estate agents, were consulted by the defendant, who wished to sell her leasehold interest in certain premises. The terms of the contract between the parties were contained in a letter written by the plaintiffs, which set out the terms upon which the defendant was prepared to sell the lease and continued: "We would take this opportunity of confirming that in the event of our introduction of a party prepared to enter into a contract to purchase on the above terms or on such other terms to which you may assent you will allow us commission upon the scale of the Estate Agents' Institute." The plaintiffs introduced two applicants who were interested jointly in purchasing the lease, and negotiations proceeded between the applicants and the defendant "subject to contract." At the conclusion of these negotiations the solicitors acting respectively for the applicants and for the defendant prepared counterparts of the proposed contract of sale. The applicants signed their part of the contract, and it was forwarded to the defendant's solicitor, who sent the defendant's part of the contract to her for signature. The defendant then decided not to sign her part of the contract and, in consequence, no enforceable contract came into existence. The plaintiffs claimed that they had earned their commission under the contract with the defendant.

WINN, J., said that after a survey of the relevant cases he had come to the conclusion that there was no case precisely in point. He held that the phrase "introduction of a party prepared to enter into a contract" meant, as a matter of construction, precisely the same as "introduction of a party who does enter into a contract to purchase." Counsel for the defendant submitted that for the sake of certainty and clarity, and because of the necessity of being able to say at what point if any the contract bit upon the owner of the property in favour of the estate agent, it was necessary to have the one clear and undoubted criterion: had there been a contract? That meant: had contracts been exchanged in a case such as this, where the parties had been negotiating "subject to contract," all appreciating that until counterparts of the contract had been exchanged there would be a *locus poenitentiae* for each party? That submission was quite convincing. In its context the word "assent" meant: finally assent at the last moment of time at which the property owner would be entitled, when the negotiations had proceeded to that final stage, to say: "These are the terms precisely to which I give my concluded and considered assent." In the result the claim failed.

APPEARANCES: *Harold Lightman*, Q.C., and *Edward Seeley* (*Pratt & Sydney Smith*); *D. P. Croom-Johnson*, Q.C., and *Peter Ripman* (*R. C. de M. Blum*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law **[1 W.L.R. 706**

COUNTY COURT PRACTICE: LAPSE OF GRANT OF NEW TRIAL: JURISDICTION OF JUDGE TO ORDER NEW TRIAL ON DIFFERENT GROUNDS: WHETHER CERTIORARI LIES TO COUNTY COURT

R. *v.* Judge Sir Shirley Worthington-Evans; *ex parte* Madan and Another

Lord Parker, C.J., Donovan and Salmon, JJ.
12th May, 1959

Applications for orders of certiorari and prohibition.

Plaintiffs brought two actions in the Bloomsbury County Court against the defendant, claiming, in the first action, possession of certain premises and mesne profits, and in the second action damages for alleged conversion of goods at the premises. No defence was put in and on 8th July, 1958, the judge, after hearing evidence, gave judgment for the plaintiffs. On 24th July the defendant applied to the judge that the judgments be set aside and new trials be ordered on the ground that he had not been represented at the hearing owing to a misunderstanding as to the date. The judge (acting under r. 2 of Ord. 37 of the County Court Rules, 1936) granted the application on terms that the defendant paid into court on or before 1st October a sum of money in each action. The terms were not complied with and the plaintiffs issued judgment summonses in the Clerkenwell County Court, the court having jurisdiction for the defendant's address pursuant to Ord. 25, r. 48. The defendant gave notice that he intended to apply to the court in each action to grant him "each and every form of relief necessary to defeat fraud." That application was heard by the judge of the Clerkenwell County Court on 18th December, 1958, who, after an affidavit sworn by the defendant had been read, made orders (under r. 1 of Ord. 37) that the judgments in the actions and all subsequent proceedings thereon be set aside and new trials be had between the parties. The plaintiffs applied for an order of certiorari to quash the orders of 18th December, 1958, on the ground that the judge of the Clerkenwell County Court had had no jurisdiction to make them; they also sought an order of prohibition prohibiting the judge and the defendant from further proceeding with the actions.

DONOVAN, J., reading the judgment of the court, said that they were satisfied that in a proper case the court had power by writ of certiorari to bring up and quash the order of a county court judge made without jurisdiction in that behalf. Order 37, rr. 1 and 2, of the County Court Rules, 1936, did not designate the individual judge who tried the case as the only judge with power to order a new trial and the judge of the court to which proceedings were transferred under Ord. 25, r. 48, had jurisdiction in a proper case to order a new trial. The problem therefore was whether the second order for a new trial could be granted at all, i.e., whether *any* county court judge would have the necessary jurisdiction to do so. Since the terms were not complied with the grant of a new trial made by the judge at Bloomsbury County Court lapsed and the position was the same as if that application had been refused. That application was made under r. 2 of Ord. 37. The application before the judge at Clerkenwell County Court was made and granted under r. 1 of Ord. 37. There had been no previous application under that rule for a new trial. Rule 2 dealt with the specific case of a judgment given in the absence of a defendant and with that case alone. It was difficult to understand upon what principle the exercise of jurisdiction in that limited field extinguished the general power under r. 1. Decided cases were only authority for the proposition that once an application for a new trial was allowed or refused under a particular provision no further application could be entertained under the same provision and, in their lordships' judgment, there was no ground for holding that the exercise of jurisdiction under r. 2 was exhaustive of the jurisdiction not only under that rule but also under r. 1 as well. Accordingly they refused the orders asked for. Applications dismissed.

APPEARANCES: *J. A. Balcombe* (*David Schayek & Co.*); *R. J. Trott* (*Probyn, Dighton & Parkhouse*).

[Reported by Miss J. F. LAMB, Barrister-at-Law] **[2 W.L.R. 908**

Court of Criminal Appeal

CRIMINAL LAW: FAILURE TO SURRENDER TO BAIL: RECOGNISANCE ESTREATED WITH ALTERNATIVE OF SIX MONTHS' IMPRISONMENT: JURISDICTION OF COURT OF CRIMINAL APPEAL TO HEAR APPEAL AGAINST SENTENCE

R. *v.* Harman

Lord Parker, C.J., Donovan and Salmon, JJ. 11th May, 1959

Appeal against sentence.

The appellant, who was granted bail pending his trial upon indictment for office-breaking and larceny, had failed to surrender to his bail. When his trial eventually took place the chairman of London Sessions, in addition to sentencing him to three years' imprisonment for the offences to which he pleaded guilty, estreated his recognisance of £100 and informed him that, if he did not pay, the alternative was a further six months' imprisonment to be consecutive upon the three years. He appealed against that further sentence, claiming that he was entitled to do so by virtue of s. 3 of the Criminal Appeal Act, 1907.

LORD PARKER, C.J., said that the jurisdiction of the Court of Criminal Appeal was limited by the Criminal Appeal Act, 1907. The jurisdiction in regard to sentences was given by s. 3 which provided: "A person convicted on indictment may appeal . . . to the Court of Criminal Appeal . . . (*c*) with the leave of the Court of Criminal Appeal against the sentence passed on his conviction, unless the sentence is one fixed by law." By s. 21, "The expression 'sentence' includes any order of the court made on conviction with reference to the person convicted . . ." It seemed perfectly clear to the court, quite apart from authority, that where the section said "any order of the court made on conviction" it must mean "made as a consequence of conviction." The matter had already come before the Divisional Court in *R.* v. *London Sessions; ex parte Beaumont* [1951] 1 K.B. 557 in regard to corresponding words in s. 36 of the Criminal Justice Act, 1948, and the Divisional Court held that the words "any order made on conviction" meant any order made as a consequence of a conviction and not an order made at the time of conviction. This was a very plain case. The sentence of six months imprisonment may have been given at the time of and while sentencing the appellant on conviction, but it had nothing to do with the conviction, any more than if the appellant had been acquitted and the recognisance estreated and a period of imprisonment ordered in default of payment. Accordingly, there was no jurisdiction in the court to entertain the appeal, which was dismissed.

APPEARANCES: *Patrick Bruce* (*Registrar, Court of Criminal Appeal*); *Harold Cassel* (*Director of Public Prosecutions*).

Reported by Mrs. E. M. WELLWOOD, Barrister-at-Law] **[2 W.L.R. 906**

PRACTICE DIRECTION

PROBATE, DIVORCE AND ADMIRALTY DIVISION

NON-CONTENTIOUS PROBATE BUSINESS BY POST AT THE PRINCIPAL REGISTRY

In accordance with section (1) of r. 3 of the Non-Contentious Probate Rules, 1954, the President has directed that as from 1st July, a person applying for a second or subsequent grant through a solicitor may apply by post at the Principal Registry in cases where the original will is registered or the original grant was made at the Principal Registry. Also, application for the resealing of a Scottish confirmation or a Northern Irish or Colonial grant may be made by post at the Principal Registry.

Dated 28th May, 1959.

By direction of the President.
B. LONG,
Senior Registrar.

N.B.—This direction does not provide postal facilities at the Principal Registry for applications for first grants, for which postal facilities are available at all District Probate Registries.

IN WESTMINSTER AND WHITEHALL

HOUSE OF LORDS

PROGRESS OF BILLS

Read Second Time :—

Dog Licences Bill [H.L.]	[4th June.
Fire Services Bill [H.L.]	[2nd June.
London County Council (Money) Bill [H.C.]	[2nd June.
Mental Health Bill [H.C.]	[4th June.
Obscene Publications Bill [H.C.]	[2nd June.
Solicitors (Amendment) Bill [H.L.]	[5th June.

Read Third Time :—

Birmingham Corporation Bill [H.C.]	[3rd June.
Mock Auctions Bill [H.L.]	[4th June.
North Devon Water Bill [H.C.]	[2nd June.
Port of London Bill [H.C.]	[3rd June.
Railway Passengers Assurance Bill [H.C.]	[2nd June.

In Committee :—

Metropolitan Magistrates' Courts Bill [H.L.]	[4th June.
Weeds Bill [H.L.]	[4th June.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read Second Time :—

Cotton Industry Bill [H.C.]	[4th June.
Pensions (Increase) Bill [H.C.]	[2nd June.

Read Third Time :—

Royal Wanstead School Bill [H.L.]	[2nd June.

B. QUESTIONS

LAND REGISTRATION

The ATTORNEY-GENERAL said that approximately a quarter of all conveyancing transactions in England and Wales were now registered in Her Majesty's Land Registry. Registration of title was compulsory on sale in the administrative counties of London, Middlesex, Surrey and (except in the parts nearest to London) Kent, and in the county boroughs of Eastbourne, Hastings, Croydon, the City of Oxford, Oldham, Leicester and the City of Canterbury. Elsewhere large areas of land were being registered voluntarily. The compulsory area would be extended to the rest of Kent in 1961. It was also hoped to extend it to Manchester and Salford in the course of the next year. The extension of the compulsory area would be made as fast as the availability of up-to-date Ordnance Survey Maps and the recruitment and training of staff permitted. [2nd June.

CONSUMER PROTECTION COMMITTEE

Sir DAVID ECCLES said that Mr. J. T. Molony, Q.C., had accepted his invitation to serve as chairman of the Departmental Committee on Consumer Protection. The Committee's terms of reference would be :—

> To review the working of the existing legislation relating to merchandise marks and certification trade marks, and to consider and report what changes, if any, in the law and what other measures, if any, are desirable for the further protection of the consuming public.

Membership of the Committee would be announced as soon as possible. [4th June.

CRIMINAL CHARGES (COSTS ON ACQUITTAL)

Mr. R. A. BUTLER said that the Government had no proposals for amending the law covering the payment of defence costs where the accused were acquitted or summary cases dismissed. He said that it had always been considered right to leave the matter to the discretion of the courts. They had the power to order payment of the costs of the defence out of local funds or to make an order for costs to be paid by a prosecutor as thought just and reasonable. [4th June.

STATUTORY INSTRUMENTS

Anti-Dumping (No. 1) Order, 1958 (Revocation) Order, 1959. (S.I. 1959 No. 918.) 4d.

Arsenic in Food (Scotland) Regulations, 1959. (S.I. 1959 No. 928.) 6d.

County of Inverness (Aut Mot, Newtonmore) Water Order, 1959. (S.I. 1959 No. 927.) 5d.

Fire Services (Conditions of Service) (Scotland) Regulations, 1959. (S.I. 1959 No. 922.) 5d.

Hull and East Yorkshire River Board (Elloughton and Welton Internal Drainage District) Order, 1959. (S.I. 1959 No. 938.) 5d.

Import Duty Drawbacks (No. 5) Order, 1959. (S.I. 1959 No. 921.) 5d.

Indian Military Service Family Pension Fund (Amendment) Rules, 1959. (S.I. 1959 No. 949.) 5d.

London North Circular Trunk Road (Silver Street, Edmonton, Diversion) Order, 1959. (S.I. 1959 No. 923.) 5d.

Draft **Merchandise Marks** (Imported Goods) No. 2 Order, 1959. 5d.

National Insurance Regulations :—
(Industrial Injuries) (Benefit) Amendment, 1959. (S.I. 1959 No. 937.) 5d.
(Overlapping Benefits) Amendment Provisional, 1959. (S.I. 1959 No. 942.) 5d.

Newhaven, Seaford and Ouse Valley Water Order, 1959. (S.I. 1959 No. 920.) 5d.

Opencast Coal (Requisitioned Land) (Compensation Notice) Regulations, 1959. (S.I. 1959 No. 929.) 5d.

Retention of Sewers under Highways (County of York, West Riding) (No. 2) Order, 1959. (S.I. 1959 No. 931.) 5d.

Stopping up of Highways Orders :—
County of Berks (No. 2) (S.I. 1959 No. 930.) 5d.
City and County of Bristol (No. 6). (S.I. 1959 No. 932.) 5d.
County of Chester (No. 12). (S.I. 1959 No. 933.) 5d.
County of Cornwall (No. 2). (S.I. 1959 No. 913.) 5d.
County of Derby (No. 11). (S.I. 1959 No. 934.) 5d.
County of Gloucester (No. 10). (S.I. 1959 No. 911.) 5d.
County of Lancaster (No. 7). (S.I. 1959 No. 914.) 5d.
County of Lancaster (No. 8). (S.I. 1959 No. 915.) 5d.
County of Norfolk (No. 2). (S.I. 1959 No. 916.) 5d.
County of Warwick (No. 7). (S.I. 1959 No. 912.) 5d.
County of Warwick (No. 8). (S.I. 1959 No. 924.) 5d.
County of York, West Riding (No. 13). (S.I. 1959 No. 935.) 5d.

Swine Fever (Amendment) Order, 1959. (S.I. 1959 No. 939.) 5d.

SELECTED APPOINTED DAYS

May	
28th	Anti-Dumping (No. 1) Order, 1959. Customs Duties. (S.I. 1959 No. 917.)
June	
1st	Post-War Credit (Income Tax) Regulations, 1959. (S.I. 1959 No. 876.)
11th	Merchandise Marks (Imported Goods) No. 1 Order, 1959. (S.I. 1959 No. 404.)
14th	House Purchase and Housing Act, 1959.
	Housing (Underground Rooms) Act, 1959.
	Restriction of Offensive Weapons Act, 1959.

POINTS IN PRACTICE

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the "Points in Practice" Department, The Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, London, E.C.4. They should be brief, typewritten in duplicate, and accompanied by the name and address of the sender on a separate sheet, together with a stamped addressed envelope. Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all.

Stamp Duty—Series of Transactions—Gifts of Properties to Son

Q. Our client is the owner of two properties: (1) held in fee simple, with a current market value of £6,500, and (2) held under a lease for 10,000 years with a current market value of £2,500. It is proposed to execute a voluntary conveyance and a voluntary assignment of these properties in favour of his son. Is it possible to claim that these do not form part of a series of transactions? There does not appear to be any guidance on the point in Alpe. It is the writer's memory that the certificate was primarily intended to prevent one transaction being divided into a number of small ones, in order to evade stamp duty, though it would seem probable that the wording of the certificate leaves us with no escape in this case.

A. Whether any two or more transactions do or do not form part of a series for this purpose is always a difficult question. It does not seem to us, however, that there is any interdependence between the two gifts: the donor wishes to give to his son a freehold property and he wishes to give to his son a leasehold property; the two are separate gifts, although made at the same time, and there is no reason to suppose that one might not have been made without the other had the donor been less generous. In these circumstances, the transactions are comparable to two or more purchases by the same purchaser at the same auction sale, and it has been held that in those circumstances the certificate may properly be inserted. The conveyance and the assignment will in any case have to be adjudicated, and we suggest that the certificate be included, leaving it to the Revenue authorities to query it if they wish to.

Rent Act, 1957—Whether Applicable to Service Occupant of Tied House

Q. Has the Rent Act, 1957, any application whatever to the position of a service occupant of a tied house (e.g., a farm worker) who can be evicted by his employer on the termination of his employment?

A. The essential consideration is, in our opinion, whether the house was "let" and, unfortunately, the expression "tied" is sometimes used to cover cases in which a dwelling *is* let to an employee of the landlord, and the expression "service occupant" to cover cases in which the employee pays rent (or the value of the accommodation has been quantified, in terms of money, by agreement between the parties: see *Montagu* v. *Browning* [1954] 1 W.L.R. 1039; *O'Connor* v. *Hare* [1954] 1 W.L.R. 824). But, if the expressions are used in the narrower and, in our view, correct sense, at all events as far as "service occupant" is concerned, the Rent Act, 1957, has no application to the position; and we would draw attention to the observations of Goddard, L.C.J., in *Ramsbottom* v. *Snelson* [1948] 1 K.B. 473, at p. 477, and Denning, L.J., in *Torbett* v. *Faulkner* [1952] 2 T.L.R. 659, at p. 660.

Rent Restriction—Whether Sub-tenant Protected on Surrender of Mesne Tenancy

Q. A let certain property unfurnished to *B* on an annual tenancy. *B* with the consent of *A* let the property furnished to *C*. *B* surrendered the tenancy to *A* leaving *C* in possession. *B* removed his furniture and *C* took his own furniture into the house. *A* requires possession of the house, and the question is whether *C* who is still in possession is protected under the Rent Restrictions Act. The rateable value of the property is under statutory limits.

A. If on *B* surrendering the mesne tenancy *C* gave up not only *B's* furniture but all right to call for furniture, *C* is, in our opinion, a protected tenant by virtue of the Increase of Rent, etc., Restrictions Act, 1920, s. 15 (3). The fact that the furniture was not *A's* furniture would not affect the position: *Goatcher* v. *Starling* [1950] E.G.D. 259, supports this view, at county court level; but there would have been a variation analogous to that dealt with in *Seabrook* v. *Mervyn* [1957] 1 All E.R. 295, so that *A* could not take advantage of *Prout* v. *Hunter* [1954] 2 K.B. 736; see also *Leslie & Co., Ltd.* v. *Cumming* [1926] 2 K.B. 417.

NOTES AND NEWS

ARTICLED CLERKS: REGULATIONS GOVERNING TERM OF SERVICE

The Council of The Law Society have, with the approval of the Lord Chancellor, the Lord Chief Justice and the Master of the Rolls, made the Articled Clerks (Amendment No. 3) Regulations, 1959, which came into force on 1st June last. The effect of the Regulations is that in the case of a person who enters into, and serves under articles for not less than a year before going to a recognised University, and whose articles have been discharged or otherwise cancelled and replaced by new articles after he has taken his degree, the term of service under the new articles shall be two and a half years. The previous requirement has now been abolished.

ACCOUNTANT'S CERTIFICATES: DISCIPLINARY ACTION AGAINST LATE DELIVERY

The Council of The Law Society consider that every solicitor who is liable to deliver an accountant's certificate under the Accountant's Certificate Rules, 1954, should now be thoroughly familiar with his statutory obligation to do so, and that delays in its delivery ought no longer to be regarded as reasonable. Henceforth, as from 16th November, 1959, the Council of The Law Society will only send out one reminder to a solicitor who is late with his accountant's certificate. The reminder will inform him of the date on which the certificate was due and that it has not yet been received and that, unless within seven days the certificate is received or a sufficient and satisfactory written explanation given to the Society for its non-delivery, disciplinary proceedings will be instituted against the solicitor without further notice.

HOUSE OF LORDS' STANDING ORDERS: SECURITY FOR COSTS

Under Standing Order V an appellant must give security for costs when bringing an appeal to the House of Lords, and this may be done by means of a recognisance for £500, and a bond for £200, or by a recognisance and a lodgment of £200 in cash. The total amount, therefore, to be secured under the Standing Orders is £700, but no provision is made for the payment of the total sum of £700 in cash. In recent years parties have found it convenient to pay the total amount in cash, and when this occurs it is now necessary to make a formal Order in the Minutes allowing them to do so. Following amendments made on 2nd June, Orders V and XI now read as set out below, the amendments to Order XI being italicised (words added) or indicated by square brackets (words omitted):—

V. (1) Ordered, that in all Appeals the Appellants do give security for costs either—

(*a*) by payment into the House of Lords Security Fund Account of the sum of £700, such sum to be subject to the Order of the House in regard to the costs of the Appeal; or

(*b*) by payment of the sum of £200 into the House of Lords Security Fund Account, and by entering into a recognizance, in person or by substitute, to the amount of £500; or

(*c*) by procuring two sufficient sureties, to the satisfaction of the Clerk of the Parliaments, to enter into a joint and several bond to the amount of £200, and by entering into a recognizance, in person or by substitute, to the amount of £500.

Ordered, that all payments of money into the Security Fund Account be made within one week of the presentation of the Appeal.

ORDERED, that the names of sureties or substitutes, with a certificate of sufficiency signed by the Agents for the Appellants, be lodged in the Parliament Office within one week of the presentation of the Appeal, two clear days' previous notice of the names so proposed for the bond and the recognizance having been given to the Solicitors or Agents for the Respondents.

(2) ORDERED, that, in the event of the Clerk of the Parliaments requiring a justification of the sureties or substitute, the Agents for the Appellants do, within one week from the date of official notice to that effect, lodge in the Parliament Office an affidavit or affidavits by the proposed sureties or substitute, setting forth specifically the nature of the property in consideration of which they claim to be accepted, and also declaring that the property in question is unencumbered and that, after payment of all just debts and liabilities, such sureties or substitute are each well and truly worth the sums required under the bond or the recognizance respectively.

ORDERED, that, in the event of the proposed sureties to the bond not being deemed satisfactory by the Clerk of the Parliaments, the Appellants do, within four weeks of the date of official notice by the Clerk of the Parliaments to that effect, pay into the Security Fund Account the sum of £200 to be subject to the Order of the House with regard to the costs of the Appeal; and that, in the event of the proposed substitute to the recognizance not being deemed satisfactory by the Clerk of the Parliaments, the Appellants do enter into the usual recognizance in person.

(3) ORDERED, that any such bond and the recognizance (whether entered into by the Appellants or by a substitute) be returned to the Parliament Office duly executed within one week from the date of the issue thereof to the Solicitors or Agents for the Appellants.

On default by the Appellants in complying with the above conditions, the Appeal to stand dismissed.

* * * * * * *

XI. ORDERED, that the Clerk of the Parliaments shall appoint such person as he may think fit as Taxing Officer, and in all cases in which this House shall make any order for payment of costs by any party or parties in any cause, the amount thereof to be certified by the Clerk of the Parliaments, the Taxing Officer shall tax the Bill of the Costs so ordered to be paid, and ascertain the amount thereof, and report the same to the Clerk of the Parliaments or Clerk Assistant; And it is further Ordered, that the same fees shall be demanded from and paid by the party applying for such taxation for and in respect thereof as is now charged or shall be fixed by any resolution of this House; and such fee shall be added at the foot of the said Bill of Costs as taxed. And the Clerk of the Parliaments or Clerk Assistant may give a certificate of such costs, expressing the amount so reported to him as aforesaid and in his certificate as well as in the Taxing Officer's report, regard shall be had to *any sum that* has been paid in to the [account of the] Security Fund Account of the House, as directed by Standing Order No. V.; and the amount in money certified by him in such certificate shall be the sum to be demanded and paid under or by virtue of such order as aforesaid for payment of costs.

ORDERED, that when the payment of costs is so ordered to a successful Appellant in an appeal *in formâ pauperis*, the Taxing Officer shall not, on taxation, allow the fees of the House nor the fees of Counsel, but shall allow to the Solicitor his costs out of pocket, with a reasonable allowance (such allowance to be taken as three-eighths of the Solicitor's charges in 'Dives' Appeals, other than out-of-pocket costs) to cover office expenses, including clerks, &c.

"THE SOLICITORS' JOURNAL"

Editorial, Publishing and Advertisement Offices: Oyez House, Breams Buildings, Fetter Lane, London, E.C.4. Telephone: CHAncery 6855.

Annual Subscription: Inland £4 10s., Overseas £5 (payable yearly, half-yearly or quarterly in advance).

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CASES REPORTED IN VOL. 103

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